

Dates of drafts of Amended and Consolidated Secured Promissory Note dated December 31, 2016 in the amount of \$5,372,324.73, between Arie Genger (“Lender”) and Orly Genger (“Borrower”):

- Draft 11/9/17
- Draft 11/10/17
- Draft 11/17/17
- Draft 12/14/17
- Draft 12/15/17
- Draft 12/20/17
- Draft 2/9/18
- Draft 2/13/18
- Draft 2/26/18
- Final 4/5/18

<div>Page 1</div> <div>1 UNITED STATES DISTRICT COURT</div> <div>2 SOUTHERN DISTRICT OF NEW YORK</div> <div>3 -----X</div> <div>4 SAGI GINGER,</div> <div>5 Plaintiff,</div> <div>6 Civil Action No.:</div> <div>7 1:17cv8181</div> <div>8 -against-</div> <div>9 ORLY GINGER,</div> <div>10 Defendant.</div> <div>11 -----X</div> <div>12 May 14, 2019</div> <div>13 10:00 A.M.</div> <div>14 DEPOSITION of the Non-Party Witness, LANCE G.</div> <div>15 HARRIS, taken by the Plaintiff, pursuant to a</div> <div>16 Subpoena, held at the offices of Kelley, Drye &</div> <div>17 Warren LLP, 101 Park Avenue, 27th Floor, New</div> <div>18 York, New York 10178, before Yuliya Yemtsova, a</div> <div>19 Professional Court Reporter and a Notary Public</div> <div>20 of the State of New York.</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	<div>Page 3</div> <div>1 221. UNIFORM RULES FOR THE</div> <div>2 CONDUCT OF DEPOSITIONS</div> <div>3 221.1 Objections at Depositions</div> <div>4 (a) Objections in general.No objections shall</div> <div>5 be made at a deposition except those which,</div> <div>6 pursuant to subdivision (b), (c) or (d) of Rule</div> <div>7 3115 of the Civil Practice Law and Rules, would</div> <div>8 be waived if not interposed, and except in</div> <div>9 compliance with subdivision (e) of such rule.</div> <div>10 All objections made at a deposition shall be</div> <div>11 noted by the officer before whom the deposition</div> <div>12 is taken, and the answer shall be given and the</div> <div>13 deposition shall proceed subject to the</div> <div>14 objections and to the right of a person to</div> <div>15 apply for appropriate relief pursuant to</div> <div>16 Article 31 of the CPLR.</div> <div>17 (b) Speaking objections restricted.Every</div> <div>18 objection raised during a deposition shall be</div> <div>19 stated succinctly and framed so as not to</div> <div>20 suggest an answer to the deponent and, at the</div> <div>21 request of the questioning attorney, shall</div> <div>22 include a clear statement as to any defect in</div> <div>23 form or other basis of error or irregularity.</div> <div>24 Except to the extent permitted by CPLR Rule</div> <div>25 3115 or by this rule, during the course of the</div> <div>examination persons in attendance shall not</div> <div>make statements or comments that interfere with</div> <div>the questioning.</div> <div>221.2 Refusal to answer when objection is made.</div> <div>A deponent shall answer all questions at a</div> <div>deposition, except (i) to preserve a privilege</div> <div>or right of confidentiality, (ii) to enforce a</div> <div>limitation set forth in an order of the court,</div> <div>or (iii) when the question is plainly improper</div> <div>and would, if answered, cause significant</div> <div>prejudice to any person. An attorney shall</div> <div>not direct a deponent not to answer except as</div> <div>provided in CPLR Rule 3115 or this subdivision.</div> <div>Any refusal to answer or direction not to</div> <div>answer shall be accompanied by a succinct and</div> <div>clear statement of the basis therefor. If the</div> <div>deponent does not answer a question, the</div> <div>examining party shall have the right to</div> <div>complete the remainder of the deposition.</div> <div>23</div> <div>24</div> <div>25</div>
<div>Page 2</div> <div>1 A P P E A R A N C E S</div> <div>2</div> <div>3 KELLEY DRYE & WARREN LLP</div> <div>4 Attorneys for the Plaintiff</div> <div>5 SAGI GINGER</div> <div>6 101 Park Avenue, 27th Floor</div> <div>7 New York, New York 10178</div> <div>8</div> <div>9 BY: JOHN DELLAPORTAS, ESQ.</div> <div>10 P: (212) 808-5000</div> <div>11</div> <div>12</div> <div>13 ALSO PRESENT:</div> <div>14 SAGI GINGER - Plaintiff</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	<div>Page 4</div> <div>1 221. UNIFORM RULES FOR THE</div> <div>2 CONDUCT OF DEPOSITIONS</div> <div>3 221.3 Communication with the deponent</div> <div>4 An attorney shall not interrupt the</div> <div>5 deposition for the purpose of communicating</div> <div>6 with the deponent unless all parties consent or</div> <div>7 the communication is made for the purpose of</div> <div>8 determining whether the question should not be</div> <div>9 answered on the grounds set forth in section</div> <div>10 221.2 of these rules and, in such event, the</div> <div>11 reason for the communication shall be stated</div> <div>12 for the record succinctly and clearly.</div> <div>13</div> <div>14 IT IS FURTHER STIPULATED AND AGREED</div> <div>15 that the transcript may be signed before any</div> <div>16 Notary Public with the same force and effect as</div> <div>17 if signed before a clerk or a Judge of the</div> <div>18 court.</div> <div>19</div> <div>20 IT IS FURTHER STIPULATED AND AGREED</div> <div>21 that the examination before trial may be</div> <div>22 utilized for all purposes as provided by the</div> <div>23 CPLR.</div> <div>24</div> <div>25 IT IS FURTHER STIPULATED AND AGREED</div> <div>that all rights provided to all parties by the</div> <div>CPLR cannot be deemed waived and the</div> <div>appropriate sections of the CPLR shall be</div> <div>controlling with respect hereto.</div> <div>IT IS FURTHER STIPULATED AND AGREED</div> <div>by and between the attorneys for the respective</div> <div>parties hereto that a copy of this examination</div> <div>shall be furnished, without charge, to the</div> <div>attorneys representing the witness testifying</div> <div>herein.</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>

<p style="text-align: right;">Page 5</p> <p>1 (Whereupon, Harris Exhibit 1-2, 2 subpoenas, were pre-marked for identification 3 as of this date by the reporter.) 4 L A N C E G. H A R R I S, having been first duly 5 sworn by a Notary Public of the State of New York, 6 testified as follows: 7 EXAMINATION BY MR. DELLAPORTAS: 8 Q. Please state your name for the 9 record. 10 A. Lance G. Harris. 11 Q. What is your address? 12 A. 1211 Avenue of the Americas, 40th 13 Floor, New York, New York 10036. 14 MR. DELLAPORTAS: Before we got on 15 the record, Mr. Harris and I agreed that for 16 purposes of streamlining the deposition, the 17 ordinary stipulations would apply, including, 18 most importantly, that all objections are 19 preserved. Correct. 20 Q. So, good morning, Mr. Harris. 21 A. Good morning, Mr. Dellaportas. 22 Q. So we're going to streamline this. 23 We know you're a little under the weather, so 24 we're going to try to get you in and out of 25 here as fast as possible.</p>	<p style="text-align: right;">Page 7</p> <p>1 everything's on local computers, so some were 2 new, some were not. So on my prior associate's 3 main computer, these drafts existed as of these 4 dates, when those were the dates of last 5 modifications. So we then reviewed that, 6 replicated that, and provided that information 7 to you. 8 Q. Okay. So is your firm on any kind 9 of network? 10 A. No. That's my -- that's exactly 11 the point. 12 Q. You have individual hard drives? 13 A. Individual hard drives. Correct. 14 Q. Okay. And you said your associate. 15 What was your associate's name? 16 A. At that time, that associate was 17 Nicole Phillips, who was the drafter of those 18 dates. She -- it was several computers, but on 19 this computer, which we have -- still have, 20 these were the drafts that existed on that 21 particular computer. 22 Q. And Ms. Phillips was the attorney 23 who drafted the promissory note? 24 A. That's my best recollection. 25 Q. Okay. And on whose behalf did she</p>
<p style="text-align: right;">Page 6</p> <p>1 A. Thank you very much. 2 MR. DELLAPORTAS: Let me first mark 3 as Harris Exhibit 3 -- oh, and just for the 4 record, we premarked as Harris Exhibits 1 and 2 5 the two subpoenas served on the law firm of 6 Stein & Harris, which brought us here today. 7 And we may ask questions about those later. 8 But for now, let's mark as Harris 9 Exhibit 3 a series -- a ten-page document 10 production produced to us yesterday by 11 Mr. Harris. The first page of which states 12 dates of draft of Amended and Consolidated 13 Secured Promissory Note. 14 (Whereupon, Harris Exhibit 3, dates 15 of drafts of Amended and Consolidated Secured 16 Promissory Note, was marked for identification 17 as of this date by the reporter.) 18 Q. So, Mr. Harris, can you tell us 19 what this first page is? 20 A. Sure. You had asked for metadata 21 and other backup support vis-à-vis the 22 consolidated promissory note dated December 31 23 between Arie and Orly for approximately \$5.3 24 million. So, in my office, we don't have a 25 server, or we don't use any cloud facility, so</p>	<p style="text-align: right;">Page 8</p> <p>1 draft it? 2 A. Our client, Arie Genger. 3 Q. What did these individual bullet 4 entries signify? 5 A. Modifications of the document, 6 every date that they were modified or some 7 saved change was made. 8 Q. Okay. So this was -- there's only 9 a single Word document? 10 A. There's a single Word document. As 11 I understand it, it was, at some point, 12 converted, and my sense is on 4/5/18 was the 13 date, it was converted to PDF, but my senses, 14 these are all draft changes of a Word document 15 that ultimately resulted in a PDF document. 16 Q. I see. And was there someone at 17 your office who assisted with the creation -- 18 who created this document? 19 A. My current associate, who uses one 20 of Nicole's old computers that had this 21 information on there. 22 Q. What's the associate's name? 23 A. Annetta Sookdeo. That's my best 24 pronunciation. 25 Q. How do you spell that?</p>

<p style="text-align: right;">Page 9</p> <p>1 A. S-O-O-K-D-H-O -- I don't 2 remember -- oh, maybe -- let me just check, if 3 you don't mind, my phone, so I don't misspell 4 an associate's name, which is embarrassing, 5 'cause I only have one. S-O-O-K-H-D-E-O. 6 Q. Okay. And what about e-mails, do 7 you have an e-mail network at your firm? 8 A. We have e-mails. We have recently 9 upgraded to a cloud-based system, and so we 10 don't have historic e-mails from prior 11 employees. Obviously only current were 12 updated. And I asked Annetta to search 13 everything she could, and Blanca, my paralegal, 14 who's worked on Genger matters, to search 15 everything she could. And I searched mine and 16 we found no -- other than there was a couple of 17 e-mails between me and Arie that are 18 attorney-client, as I indicated in my e-mail to 19 you, I believe yesterday or two days ago, there 20 was nothing else I found on this note. 21 Q. Okay. So there were two e-mails 22 between you and Arie concerning this note? 23 A. I have located two e-mails. 24 Q. Do you recall the dates of those 25 e-mails?</p>	<p style="text-align: right;">Page 11</p> <p>1 A. Right. You said Exhibit 2, so I 2 got confused. 3 Q. I'm sorry. 4 A. Yeah, I got it. 5 Q. It's Deposition Exhibit 2 is the 6 subpoena, and Exhibit C? 7 A. I got it. Perfect. 8 Q. So do you see in the whereas 9 clauses, there's a first note, second note, 10 blah, blah, blah, all the way to the tenth 11 note; do you see that? 12 A. Yes. Yes, sir. 13 Q. Where are those notes? 14 A. Those notes would have been, in the 15 ordinary course, destroyed. You know, I get 16 hit by a car, you don't want notes floating 17 around for different amounts. So upon the 18 consolidation of a note, you would always void, 19 vacate, destroy a note, you know, prior note, 20 since this is -- becomes the amalgam of all of 21 those notes. 22 Q. Okay. So you said "would have been 23 destroyed." Are you saying they were 24 destroyed? 25 A. As far as I -- yes.</p>
<p style="text-align: right;">Page 10</p> <p>1 A. I don't. I apologize. 2 Q. I mean, we would ask you to log 3 those, so that we can, you know, just a 4 standard privilege log, to, from, CCs, date, 5 and broad subject matter, so we can see whether 6 we want to test the privilege. 7 So how did this note come into 8 being? 9 A. As evidenced by the checks I've 10 previously provided to you, it's been a 11 longstanding policy, back to '07, I believe, 12 for Arie, as having -- Orly having litigation 13 that she could not afford to fund, that Arie 14 would advance Orly money pursuant to a loan. 15 And -- and the loans sort of were tallied and 16 determined on an annual basis, and this note 17 became the ultimate balance as of 12/31/16. 18 Q. Okay. Let's take a look at the 19 note, if we can. 20 A. Sure. 21 Q. So it's actually attached to your 22 Harris Exhibit 2, the second subpoena. 23 A. All right. Let me -- hold on. I'm 24 getting there. Got it -- no, I don't have it. 25 Q. It could be -- it's Exhibit C.</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Did you destroy them? 2 A. I destroyed at least some of them, 3 I recall. I don't recall each and every one of 4 them, but I do recall some of them that I, 5 personally, destroyed. 6 Q. So I'm asking you which -- let me 7 break it down. Which of these notes have you 8 physically seen, have you laid eyes on, if any? 9 A. Most, if not all. 10 Q. Okay. And you're saying that you 11 destroyed all copies -- you've seen most, if 12 not all, of the notes labeled first note 13 through tenth note described in this document? 14 A. I have seen most, if not all, of 15 these notes described in this document, and I 16 destroyed at least some of them, personally, 17 myself. 18 Q. What became of the rest? 19 A. They were all destroyed. I don't 20 have any copies of them. They are all 21 destroyed as best as I understand it. 22 Q. And so which ones did you destroy? 23 A. Mr. Dellaportas, I have racked my 24 brain on the issue. I don't recall which ones 25 I destroyed.</p>

<p style="text-align: right;">Page 13</p> <p>1 Q. Who drafted these notes?</p> <p>2 A. They go back a long time. I've had</p> <p>3 several associates. So most likely, associates</p> <p>4 would have drafted them, if I not -- did not</p> <p>5 draft them.</p> <p>6 Q. Okay.</p> <p>7 A. Me or an associate.</p> <p>8 Q. So if -- I understand it's a bit of</p> <p>9 a memory test, but if you can identify the</p> <p>10 names of any associates who you believe may</p> <p>11 have drafted any of these one to ten promissory</p> <p>12 notes?</p> <p>13 A. Yes. Over the last ten years, I've</p> <p>14 had three, so I can recall those names, except</p> <p>15 I don't remember Rosa's last name. Rosa, then</p> <p>16 it was Natalie Garcia, and then it was</p> <p>17 Ms. Phillips, and I'm blanking on her name,</p> <p>18 which I told you earlier.</p> <p>19 Q. Nicole Phillips?</p> <p>20 A. Nicole Phillips. Thank you.</p> <p>21 Q. And where are the Word documents of</p> <p>22 these ten notes?</p> <p>23 A. They would've been on the</p> <p>24 individual associate's computer that they used</p> <p>25 to draft them at that time.</p>	<p style="text-align: right;">Page 15</p> <p>1 that?</p> <p>2 A. Poor drafting -- strike that.</p> <p>3 I don't know why they would not</p> <p>4 have been identified by date. They were</p> <p>5 identified by a year, which would have</p> <p>6 corresponded to the amount loaned in that year.</p> <p>7 They probably should have had a date ascribed</p> <p>8 to them of the date of the note. And for some</p> <p>9 reason, when the amended and consolidated</p> <p>10 secured promissory note was created, the</p> <p>11 whereas did not include dates of the prior</p> <p>12 notes.</p> <p>13 Q. Okay. So describe the process.</p> <p>14 Every year, your firm would draft a new</p> <p>15 promissory note for Arie and Orly Genger?</p> <p>16 A. That was generally the practice,</p> <p>17 that we would -- you know, at the end of the</p> <p>18 year, meet and confer with Arie and the</p> <p>19 accountant and review our books and determine</p> <p>20 how much was borrowed, and then draft a</p> <p>21 corresponding note.</p> <p>22 Q. And then what would happen to that</p> <p>23 note?</p> <p>24 A. That note would be signed. I would</p> <p>25 have it, and I would hold it, and then we would</p>
<p style="text-align: right;">Page 14</p> <p>1 Q. Okay. Did you check -- did you</p> <p>2 search for these in the process of responding</p> <p>3 to one or both of our subpoenas?</p> <p>4 A. Yes. I've searched my computer and</p> <p>5 Nicole's -- the computer that's at the office</p> <p>6 from Nicole's old office, yes.</p> <p>7 Q. And?</p> <p>8 A. We don't have any copies.</p> <p>9 Q. Okay. So you're saying you don't</p> <p>10 have any paper copies of any of the ten</p> <p>11 promissory notes, and you don't have any Word</p> <p>12 copies or other electronic copies?</p> <p>13 A. I do not have electronic copies.</p> <p>14 Q. Okay. Do you have paper copies of</p> <p>15 any of these notes?</p> <p>16 A. Not that I recall. We have checked</p> <p>17 most of the -- I mean, as you can appreciate,</p> <p>18 the Genger files are voluminous. We have done</p> <p>19 an earnest search, but we continue to search</p> <p>20 through all of the documents to continue to be</p> <p>21 responsive to your subpoenas. We have not</p> <p>22 found any.</p> <p>23 Q. Okay. Now, I note that the ten</p> <p>24 promissory notes described here, none of them</p> <p>25 actually have a date attached to them. Why is</p>	<p style="text-align: right;">Page 16</p> <p>1 do the same thing next year.</p> <p>2 Q. Signed by whom?</p> <p>3 A. It would be signed by Orly.</p> <p>4 Q. How did Orly come to get the notes?</p> <p>5 A. You know, back in earlier days, she</p> <p>6 would be in my office more than she has been in</p> <p>7 more recent years. So we would either be</p> <p>8 definitionally, by her coming by my office,</p> <p>9 which I recall on several occasions, and in the</p> <p>10 later years, one would imagine by messenger,</p> <p>11 because I think for most of that time, she</p> <p>12 lived in the city.</p> <p>13 Q. So Orly would either come to your</p> <p>14 office or messenger a signed copy of the</p> <p>15 promissory note?</p> <p>16 A. Right. I mean -- I mean, I</p> <p>17 remember one occasion being in Arie's office</p> <p>18 and Orly being there.</p> <p>19 Q. Okay. Was ever any of these notes</p> <p>20 either e-mailed either to her or signed back</p> <p>21 from her?</p> <p>22 A. I did not e-mail with Orly very</p> <p>23 much over the course of years. It was mostly</p> <p>24 in-person conversations. I mean, literally</p> <p>25 rarely.</p>

<p style="text-align: right;">Page 17</p> <p>1 Q. So just to be clear. For the ten 2 promissory notes described herein, you don't 3 have any paper copies, you don't have any 4 electronic copies, you don't have any e-mail 5 transmittals about them, and you don't know the 6 dates? 7 A. Well, not knowing the dates, I 8 think, is not a correct statement. I think the 9 dates are evidenced by the saying -- 10 Q. Sorry. 11 A. I didn't want to interrupt. By 12 saying 2008, definitionally meaning the 13 calendar year 2008. Could it have been 14 clearer? Sure. But I think it is indicative 15 of the loan for that year reading the whereas 16 clause in the ordinary course. Plus, as you 17 know, you have the backup checks that evidenced 18 the loan -- the underlying loans for those 19 years -- for most of those years. 20 Q. What were the interest rates on 21 these notes? 22 A. Oh, that's a great question. I 23 believe we used the -- the midterm AFRs on all 24 of them, which for most of the period of time, 25 believe it or not, was a constant 2.17. Don't</p>	<p style="text-align: right;">Page 19</p> <p>1 and the lender share an accountant, Bill 2 Fisher? 3 A. Oh, accountant. I thought you said 4 accountant. 5 Q. I'm mumbling today. Sorry. 6 A. Don't worry about it. I just 7 wanted to get -- yes, I don't believe that was 8 always the case during the course of this all 9 these years, but I do know that that is, in 10 fact, the case today. Or, actually, I don't 11 know that. I knew at one point during this 12 term, that was the fact. I don't know since 13 Ms. Genger got married, whether she uses 14 Mr. Fisher or somebody else. 15 Q. Okay. Well, let's leave it to the 16 years of the promissory notes, which is 2007 to 17 2016, and I believe Ms. Genger got married in 18 September of 2016. So up until her marriage, 19 are you aware that the borrower and the lender 20 shared an accountant, Bill Fisher? 21 A. Again, I -- my best recollection 22 with this, again, being a memory test, is 23 sometime between '07 and '10, I believe she had 24 a different accountant. 25 Q. Stanley Altmark?</p>
<p style="text-align: right;">Page 18</p> <p>1 ask why I remember that. And then I think at 2 one point it tipped up to about two and a half, 3 is my best recollection. 4 Q. And did Orly ever make any payments 5 on any of these ten promissory notes? 6 A. Not that I'm aware of. 7 Q. Okay. Did you provide copies of 8 promissory notes to either Orly or Arie, or did 9 your office maintain the only copies? 10 A. As far as I understood, they 11 maintain the only copies. 12 Q. I'm sorry, "they"? 13 A. The royal "they." Me, my office. 14 Q. Okay. So you did not provide 15 copies either to the borrower or the lender of 16 the promissory note? 17 A. No. Again, these were ongoing 18 notes and we wanted to just not be confused. 19 So as far as I understood, I was the depository 20 for the document. 21 Q. Now, you understand that both the 22 borrower and the lender shared an accountant, 23 Mr. Fisher, correct? 24 A. I didn't understand the question. 25 Q. Do you understand that the borrower</p>	<p style="text-align: right;">Page 20</p> <p>1 A. Yes. 2 Q. Okay. Other than Mr. Altmark, are 3 you aware of any other accountants that either 4 Arie or Orly used during this time period? 5 A. I have no idea what accountants 6 Arie used besides Mr. Fisher. As to Orly, I 7 only know of those two accountants up until her 8 marriage, which, again, since then, I don't 9 know if she has some other accountant. 10 Q. Okay. Did you ever provide either 11 Mr. Fisher or anyone at his firm, or 12 Mr. Altmark or anyone at his firm, copies of 13 any of the notes designated as first note 14 through tenth note? 15 A. The actual notes, no. The 16 information contained within the notes, 17 absolutely. 18 Q. Is there any writing in existence, 19 whether it be an e-mail, a letter, or maybe a 20 voicemail captured somewhere, any reference in 21 existence prior to the date of this note to 22 these promissory notes described herein? 23 A. As I said, the sum and substance of 24 those promissory notes as to amounts, 25 interesting rates, I am certain there had been</p>

<p style="text-align: right;">Page 21</p> <p>1 e-mail communication between Mr. Fisher and I 2 relating to the borrowing and the interest 3 rate, because the midterm AFRs, I only would 4 have gotten from an accountant. I don't keep 5 AFR rates around, and accountants seem to know 6 that pretty quickly. So I'm certain I've 7 gotten that information either from Stanley 8 Altmark's office and/or Bill Fisher's office on 9 an annual basis. 10 Q. Okay. So I'm not asking about 11 communications about interest rates, although I 12 didn't see anything in your production from 13 that, so we would ask that you produce those 14 communications, if they exist. But more 15 specifically, prior to this note that we're 16 looking at, this purported December 31, 2016, 17 promissory note, is there any reference 18 anywhere in writing in existence to the words 19 "promissory note" associated with Arie's 20 payment of Orly's legal fees? 21 A. I'm sure there are communication 22 between Arie and I as to Orly's promissory note 23 that would be protected. 24 Q. Privileged, you mean? 25 A. Privileged.</p>	<p style="text-align: right;">Page 23</p> <p>1 e-mail? Is it in writing? 2 A. Well, again, there is writings 3 between Arie and I. I hear your request for a 4 log. I will take that under advisement, but 5 there certainly had been many communications 6 regarding promissory notes. These were not 7 gifts. These were not -- these were nothing 8 but loans, as evidenced by, ultimately, the 9 amended and consolidated secured promissory 10 note, and I think it's pretty clear, but... 11 Q. So describe a little bit more about 12 your e-mails. So you say that you've gone to a 13 cloud-based server, correct? 14 A. As of, like, literally ten days 15 ago. Yes. 16 Q. What's the company that does that? 17 A. I don't know. I outsource with 18 other -- with another company to provide my 19 service. I use a gentleman who provides me my 20 IT. 21 Q. What's his name? 22 A. John DeVito. 23 Q. Like Danny DeVito? 24 A. Except John, and he's much taller. 25 Q. Okay. But I'm saying the spelling?</p>
<p style="text-align: right;">Page 22</p> <p>1 Q. We would ask that you provide us a 2 log of those communications. They're 3 responsive to our request, and maybe some 4 portions of them are privileged. But it's our 5 view, just to be blunt, that these promissory 6 notes never existed. And if you have evidence 7 that they existed, we would suggest that you 8 produce them right away, because the matter is 9 going to be litigated. 10 A. What are the stacks of checks? 11 Q. Well, I'm here to answer the 12 questions. 13 A. Okay. I just thought it was pretty 14 obvious that they clearly existed alone, but 15 okay. 16 Q. Okay. Well, just where in writing 17 does it reference that prior to December 31, 18 2016. You tell me. 19 A. Where does what reference what? 20 Q. If I take a time machine back to 21 December 30th, 2016, where in the world can I 22 see that there's a reference to a promissory 23 note between Arie and Orly Genger? 24 A. Where can you see -- 25 Q. Where do I find it? Is it an</p>	<p style="text-align: right;">Page 24</p> <p>1 A. Yes, I believe that's the correct 2 spelling. 3 Q. Do you sublease space in the 4 Zeichner Ellman firm for your law firm? 5 A. I do. I think technically, it's a 6 license, but... 7 Q. Fair enough. 8 A. Yes. 9 Q. And just to be clear, I'm not 10 trying to trick you or anything. When I say 11 "you," it's colloquial, it can mean your firm 12 as opposed to you, personally. 13 A. I took it that way, but thank you 14 for the clarification. 15 Q. Okay. So, do you share any 16 technology with the Zeichner firm? 17 A. I -- technically, I think I do for 18 the purposes of scans. Like when I scan 19 something, you know, it gets scanned over their 20 system to me, but it's to my e-mail. 21 Q. Like their copier? 22 A. Their copier. 23 Q. You use their phone service? 24 A. Yeah. Yeah. I don't know. I 25 mean, I have a direct dial number. It doesn't</p>

<p style="text-align: right;">Page 25</p> <p>1 go through their switchboard. But do they 2 record the ins and outs of my -- I have no 3 idea. 4 Q. Okay. And then what about 5 computers, do you share a network with them? 6 A. Absolutely not. They -- I can't 7 even use Wi-Fi, because they do a lot of Bank 8 of America work, and they're very strict about 9 their protocols. So never have those two 10 crossed, mostly because of their requirements. 11 Q. And prior to using the cloud-based 12 system, you just had e-mails stored on 13 individual hard drives? 14 A. Yes, sir. 15 Q. What software program did you use? 16 Was it Outlook? 17 A. Outlook. 18 Q. Okay. 19 A. It wasn't Microsoft Exchange. It 20 was Outlook. It was definitely Outlook. I 21 think now it's Exchange. 22 Q. Now it's Exchange. Okay. I'm 23 never sure what the difference is between 24 those. 25 A. Neither am I, but that's my best</p>	<p style="text-align: right;">Page 27</p> <p>1 A. This is the e-mail -- we had talked 2 about e-mails and I indicated to you that I 3 sent some e-mails in what I call the package, 4 which is this Exhibit 3, and this is an e-mail 5 to my associate, Blanca -- I mean, from my -- 6 to my associate, Blanca, from the Texas 7 Department of State, acknowledging receipt of 8 the UCC file. You had asked for e-mails. 9 Q. Sure. And that was on August 3rd, 10 2018? 11 A. Apparently at 6:33 p.m. 12 Q. So this is dated, I think, 13 August 3rd, 2018? 14 A. Yes, sir. 15 Q. So it was around that time that you 16 filed the UCC? Or your firm filed the UCC? 17 A. That is the time that Blanca sent 18 the e-mail copy to the Department -- the Texas 19 Department of State. Yes. 20 Q. Okay. And the UCC, am I correct, 21 reflects the secured -- the secured debt 22 pursuant to the promissory note that we just 23 looked at? 24 A. Yes, sir. 25 Q. Okay. And how soon before the</p>
<p style="text-align: right;">Page 26</p> <p>1 answer. But I can be correct. I'm pretty sure 2 now it's Exchange, and before it was Outlook. 3 And Exchange is supposed to be better. 4 Q. Let's go to the -- well, let me say 5 one more thing. We had -- at least my 6 understanding of our agreement was that you 7 would produce the actual metadata. This seems 8 to be a document prepared by someone describing 9 it? 10 A. It is. I told you it was. 11 Q. Yeah. So we would ask that you 12 actually send us the actual word documents so 13 we can examine the metadata on it. 14 A. You want the actual Word -- I will 15 take that under advisement. I'll just -- we'll 16 see how that all works. 17 Q. I assume you'll take everything we 18 say under advisement, and then we can get the 19 transcript and we'll -- 20 A. Figure it out. Okay. Perfect. 21 Q. Okay. So let's go to the next 22 page, if we can. 23 A. Wait, I've got to switch documents. 24 Q. This is Harris Exhibit 3. So what 25 is this next page?</p>	<p style="text-align: right;">Page 28</p> <p>1 filing of this UCC was the secured promissory 2 note actually signed and delivered? 3 A. My understanding is that the 4 secured promissory note was assigned sometime 5 in April of 2018. 6 Q. And what explains the delay between 7 the signing in April 2018 and the filing in 8 August 2018? 9 A. My -- so we don't file a ton of 10 UCCs, and I think my associate just had a bunch 11 of stuff to do and this is when it got done. 12 We knew it had to get done. And she was 13 researching the best way to do -- you know, 14 file these in the various states. And then we 15 were also determining which state to file them 16 in. 17 Q. Okay. And so you believe it was -- 18 going back to the first page now, it says, 19 "Final 4/5/18." I believe you said that's when 20 it was converted to the PDF; is that what you 21 said? 22 A. Yes, sir. 23 Q. Do you know when after that date it 24 was signed by Orly Genger? 25 A. In the ordinary course, when I</p>

<p style="text-align: right;">Page 29</p> <p>1 convert something to a PDF, that's for signing. 2 I mean, that's the whole reason I do it, 3 otherwise, you get various drafts, it gets very 4 confusing. So the last thing I do when it's 5 set, is then put it into a PDF and it gets 6 signed. 7 Q. Did Ms. Genger come to your office 8 to sign it? 9 A. In April of '18, no, I believe what 10 had happened was, 'cause I believe at that time 11 she was living in Israel, and what I think 12 happened -- what I'm pretty sure happened is 13 that I had had it messengered over to Arie. 14 Arie was going to Israel on or about that time, 15 and he was going to have that effectuated, came 16 back, messengered it to me, or FedEx'ed it to 17 me, I don't recall, and then I would have -- 18 oh, messengered -- I remember he messengered it 19 to me, and then I would have then met with 20 Blanca to have this thing signed up. 21 Q. Okay. And you have the original of 22 this? 23 A. Yes, I have the original of this. 24 Absolutely. 25 Q. Why is the -- it was signed in</p>	<p style="text-align: right;">Page 31</p> <p>1 A. I'd have to look at those numbers 2 and match it up to year-end and then check to 3 see, but okay. 4 Q. Okay. If you -- 5 A. I thought the '17 note -- the '18 6 note, you may be right, may have been an 7 interim note, but the '17 note, I thought was 8 the year-end note. But I will double-check 9 that. 10 Q. Okay. Well, we'll look at what you 11 produced later, and you'll let us know if 12 there's something else. 13 So then the next e-mail is -- maybe 14 you can tell us what page -- the next page on 15 this document is, the third page? 16 A. That is evidence of earlier on that 17 same day, on the 3rd of August, of the mailing 18 of a UCC filing to the State of New Jersey, I 19 believe. 20 Q. Why was the State of New Jersey 21 selected for the UCC filing? 22 A. I was unclear at the time as to the 23 official state of residence of Orly. So my 24 view was, and is, that there's no harm, no 25 foul, if I file it in a state that she's not</p>
<p style="text-align: right;">Page 30</p> <p>1 April. Why is it dated December 31st, 2016? 2 A. Because, like we had done with all 3 the promissory notes, our practice -- my 4 practice was to get a year-end number. So this 5 was the year-end number, the consolidated 6 year-end number for '16. I had not yet gotten 7 the '17 number. So I didn't want to -- you 8 know, I would just be chasing things. So I 9 wanted to just have a clear cutoff of a year 10 certain, and we had the '16 number, so that's 11 the number I used. I believe, but don't quote 12 me, soon thereafter, we did a '17 note, and 13 then we may or may not have done an '18 note. 14 I think there might be an '18 note. But we 15 definitely did a '17 note. 16 Q. Have you produced those? 17 A. I thought I had. If I have not, I 18 will endeavor to do so. 19 Q. We saw you produced two additional 20 notes, each one matching amounts that I believe 21 Orly paid in the federal case for this or that 22 or the other, I guess that Arie advanced Orly 23 to pay. And they're for specific amounts, but 24 they're not year-end notes. So do you have 25 additional year-end notes for '17?</p>	<p style="text-align: right;">Page 32</p> <p>1 otherwise a resident of. 2 Q. And I understand why you chose 3 Texas, and it looks a little bit later, did you 4 choose Florida as well? 5 A. I think I may have. I'll double -- 6 when we get there, I'll confirm. 7 Q. So why did you choose Texas and New 8 Jersey? 9 A. My understanding is that there are 10 residences in both states. 11 Q. When you say there are residences 12 in both states, what's your understanding? 13 A. I think that was my understanding. 14 Q. There are residences where Orly 15 stays in both states? 16 A. Where Orly stays. Orly, to the 17 best of my knowledge, has slept in both states. 18 Q. Did you select any other state? 19 A. You just earlier indicated I may 20 have selected Florida. 21 Q. I may have confused that with 22 someone else. 23 A. Okay, that's fine. 24 Q. You tell me? 25 A. No. No. This is only Texas and</p>

<p style="text-align: right;">Page 33</p> <p>1 New Jersey, so those are the states. I believe</p> <p>2 we tried to file in DC, as indicative, because</p> <p>3 I know Orly also sleeps in Israel, and I think</p> <p>4 we had some problem effectuating that UCC,</p> <p>5 because I don't see it here. But I know we had</p> <p>6 conversations, and that was probably part of</p> <p>7 the delay in my paralegal trying to figure out</p> <p>8 how to file in the District of Columbia, which</p> <p>9 apparently has a whole set of rules and</p> <p>10 processes.</p> <p>11 Q. Bear with me a second.</p> <p>12 A. No worries.</p> <p>13 Q. So if you could turn to page 9 of</p> <p>14 the -- I'm sorry, where -- of the second to</p> <p>15 last page of the document you're looking at.</p> <p>16 A. Oh.</p> <p>17 Q. Basically --</p> <p>18 A. Yeah.</p> <p>19 Q. -- the second to last page,</p> <p>20 paragraph 19, subordination agreement controls?</p> <p>21 A. Yes.</p> <p>22 Q. It references a subordination</p> <p>23 agreement dated December 31, 2016. Do you see</p> <p>24 that on the third --</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 35</p> <p>1 Q. I just want to make sure that this</p> <p>2 is the subordination agreement that you</p> <p>3 referenced in the note you prepared?</p> <p>4 A. Again, whether it was this or some</p> <p>5 draft of this, sum and substance is --</p> <p>6 Q. You're aware of it?</p> <p>7 A. I was aware that, again, the</p> <p>8 \$2 million note had preference over the</p> <p>9 \$5.3 million note. That was made aware to me.</p> <p>10 Q. Had you seen the \$2 million note</p> <p>11 prior to drafting the -- we'll call it the</p> <p>12 \$5 million note?</p> <p>13 A. I don't know if I saw it before or</p> <p>14 after. I can't --</p> <p>15 Q. Okay. But you've seen it?</p> <p>16 A. But I've seen some -- again, I</p> <p>17 don't know that I've seen the final. I'm not</p> <p>18 the keeper of those documents, but I certainly</p> <p>19 know there was a \$2 million note.</p> <p>20 Q. Did you prepare any role in</p> <p>21 drafting either the \$2 million note or the</p> <p>22 subordination agreement?</p> <p>23 A. I had reviewed the document --</p> <p>24 documents. I don't -- when you say "role," I</p> <p>25 mean, I communicated the concept with -- I</p>
<p style="text-align: right;">Page 34</p> <p>1 Q. Okay. And this is a note that your</p> <p>2 firm drafted?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And so what is this</p> <p>5 agreement that it's referencing?</p> <p>6 A. I believe there's an agreement that</p> <p>7 says that the Eric Herschmann \$2 million</p> <p>8 promissory note gets paid before this note gets</p> <p>9 paid.</p> <p>10 Q. Okay. And you had seen that</p> <p>11 agreement before drafting this thing?</p> <p>12 A. Either I had seen it or I had been</p> <p>13 told about it. You know, the sum and substance</p> <p>14 was there is a subordination.</p> <p>15 Q. And you know whether you saw it</p> <p>16 firsthand or whether someone described it for</p> <p>17 you?</p> <p>18 A. I don't recall. I believe I've</p> <p>19 seen at least a draft of it, if I did not see</p> <p>20 the final version.</p> <p>21 Q. Okay. So let's move on to 3. So</p> <p>22 if we could go back to Harris 2 --</p> <p>23 A. Yep.</p> <p>24 Q. -- and specifically to Exhibit D.</p> <p>25 A. D.</p>	<p style="text-align: right;">Page 36</p> <p>1 spoke to my client about it, and I've spoken to</p> <p>2 -- I believe -- I don't recall if it was Eric</p> <p>3 or a Kasowitz attorney, about the terms</p> <p>4 generally.</p> <p>5 Q. Okay. So I don't want to get into</p> <p>6 what you discussed with your client. It's</p> <p>7 obviously privileged.</p> <p>8 A. Of course.</p> <p>9 Q. But let me break it down into</p> <p>10 elements.</p> <p>11 A. Sure.</p> <p>12 Q. So do you know which firm was the</p> <p>13 principle draftsman on the -- let's take it one</p> <p>14 at a time, the \$2 million note?</p> <p>15 A. We can take them both, because I</p> <p>16 believe they were both Kasowitz.</p> <p>17 Q. Okay. Oftentimes with corporate</p> <p>18 documents, they go back and forth and they get</p> <p>19 revised drafted, negotiated by the parties</p> <p>20 before they go into final. So did you play a</p> <p>21 role like that for either Arie or Orly Genger</p> <p>22 vis-à-vis the Kasowitz firm?</p> <p>23 A. I don't believe that there was a</p> <p>24 lot of back and forth, but yeah, I represented</p> <p>25 Arie. I reviewed -- as I said, I reviewed</p>

<p style="text-align: right;">Page 37</p> <p>1 drafts of both documents, but I don't recall 2 there being a ton of back and forth. 3 Q. How did you see the drafts? Were 4 they e-mailed to you? 5 A. They were -- well, my offices are 6 not far from Kasowitz, so I believe I've gotten 7 some messengers. I remember some phone calls. 8 I don't know that I've seen -- I know there 9 were e-mails. I don't know that I have them, 10 because I've looked, but I know there are 11 e-mails. 12 Q. You aren't representing Eric 13 Herschmann in this transactions? 14 A. No. 15 Q. Do you know who was representing 16 Eric Herschmann, if anyone? 17 A. My best sense is Eric Herschmann 18 and perhaps the Kasowitz firm. 19 Q. Were there other Kasowitz attorneys 20 you dealt with over there? 21 A. Other than Eric? 22 Q. Yeah. With regard to -- 23 A. The two documents. 24 Q. Yeah. 25 A. I'm just trying to remember if</p>	<p style="text-align: right;">Page 39</p> <p>1 \$2 million promissory note? 2 A. I have no -- I have no knowledge of 3 that. Again, as I said, I don't think I've 4 ever seen, other than perhaps in a production 5 from you, the signed \$2 million note. I 6 certainly have -- or the subordination 7 agreement. Actually, this one isn't even fully 8 signed. 9 Q. I think it's missing Arie's 10 signature. 11 A. Yeah. But I was certainly made 12 aware of those documents. On the \$2 million 13 note, Arie is a signator. 14 Q. Yes. 15 A. I may have facilitated the receipt 16 of his signature. 17 Q. Do you recall about when he signed 18 that? 19 A. I don't. I don't recall when he 20 signed that \$2 million note. But I do recall 21 facilitating that signature. 22 Q. So has Arie ever borrowed money 23 from Mr. Hirschmann? 24 A. I believe the \$2 million note is 25 part and parcel of a loan to Arie. Aren't they</p>
<p style="text-align: right;">Page 38</p> <p>1 there was another attorney. I think there was 2 an attorney there who had sent me a document, 3 but I don't recall his name. If I find the 4 e-mail, I'll obviously tell you. 5 Q. Could it have been either Michael 6 Rosenbloom or Jack Schulman? 7 A. I don't know. It could have been 8 Michael Rosenbloom sounds familiar. I've never 9 heard of Schulman before. 10 Q. Fair enough. So what do you recall 11 about your communications with the Kasowitz 12 firm or surrounding these two documents? 13 A. Generally, they were providing the 14 documents to me on behalf of Arie. And then 15 there was -- that was about it. I mean, there 16 wasn't much -- as I said, there wasn't much of 17 red lines floating around. We had this note, 18 Arie needs to sign this note; we have a 19 subordination agreement. We know Arie has 20 loaned money to Orly over the years. We want 21 to make sure Eric gets paid -- or I want to 22 make sure that I get -- receive my money before 23 Arie. And that was the sum and substance. 24 Q. To the best of your knowledge, when 25 did Arie and Orly execute and deliver the</p>	<p style="text-align: right;">Page 40</p> <p>1 both borrowers? 2 Q. That was going to be my question, 3 is why is Mr. Hirschmann -- I'm sorry, why is 4 Mr. Genger a signatory to the \$2 million note 5 to Mr. Hirschmann? 6 A. Can I see that note? 7 Q. Sure. It should be exhibit -- I 8 think it's Exhibit B. 9 A. Oh, here it is. That was a 10 \$2 million obligation that Arie and Orly agreed 11 to be jointly bound by. 12 Q. Okay. And did you have an 13 understanding as to whether Arie has ever 14 actually borrowed any money from 15 Mr. Hirschmann? 16 A. I don't know. Other than this 17 2 million, I don't know of any borrowing. I'm 18 not saying it hasn't existed; I just don't 19 know. 20 Q. I'm not saying other than this 21 2 million. I'm saying including this 22 2 million, are you aware that Mr. Genger has 23 ever actually borrowed any money from -- 24 A. Well, I know this \$2 million got 25 paid, so I -- this is a borrowing.</p>

<p style="text-align: right;">Page 41</p> <p>1 Q. Paid from whom to whom?</p> <p>2 A. From Eric. I don't know ultimately</p> <p>3 who was the beneficiary. I'm sure they can</p> <p>4 tell you better than me, but --</p> <p>5 Q. You don't know what this note is</p> <p>6 for?</p> <p>7 A. I presumed it was related to legal</p> <p>8 fees.</p> <p>9 Q. Okay.</p> <p>10 A. But, again, I don't want to get too</p> <p>11 far out on a limb on guessing. But that is my</p> <p>12 sense.</p> <p>13 Q. Okay. And I thought you had</p> <p>14 captured all of Orly's legal fees in your</p> <p>15 recordkeeping?</p> <p>16 A. No, sir. Absolutely not.</p> <p>17 Q. So what's missing from your --</p> <p>18 A. Any fees that she paid directly, I</p> <p>19 would not have information on.</p> <p>20 Q. Okay.</p> <p>21 A. And we did our best to identify,</p> <p>22 'cause throughout the years, sometimes Orly</p> <p>23 would make payment for her fees. And so if you</p> <p>24 noticed on the spreadsheet, I -- and what took</p> <p>25 a while was to identify the source of funds</p>	<p style="text-align: right;">Page 43</p> <p>1 payment of Orly's legal bills?</p> <p>2 A. Again, the receipt of the funds.</p> <p>3 Well -- strike that.</p> <p>4 We -- John, you and I, had agreed</p> <p>5 with, I believe, the Court, agreeing that I</p> <p>6 would provide the checks and that you were</p> <p>7 getting the receipts into my IOLA account</p> <p>8 directly from Arie. So I had provided you with</p> <p>9 both the checks that paid the Orly bills, as</p> <p>10 well as a spreadsheet that would identify the</p> <p>11 loan provided for the payment of said bills.</p> <p>12 Q. Right.</p> <p>13 A. So I just want to be clear about</p> <p>14 that.</p> <p>15 Q. Okay. I take it that you or your</p> <p>16 firm didn't personally pay any of the legal</p> <p>17 bills for Orly Genger?</p> <p>18 A. I try not to do that.</p> <p>19 Q. And is there a third source, other</p> <p>20 than Arie or, say, Arie's company, AGA, or</p> <p>21 Orly, of incoming funds to pay Orly's bills?</p> <p>22 A. Nobody else wired money into my</p> <p>23 IOLA account to pay Orly's bills.</p> <p>24 Q. So it either would've been Orly, on</p> <p>25 the one hand, or Arie, on the other hand?</p>
<p style="text-align: right;">Page 42</p> <p>1 coming into my IOLA account, so what I would do</p> <p>2 is identify the gross amount of the bill, and</p> <p>3 then identify which portion Arie contributed</p> <p>4 with the delta, or difference, being what Orly</p> <p>5 would have contributed.</p> <p>6 MR. DELLAPORTAS: Would you mind</p> <p>7 just reading back the answer. I just want to</p> <p>8 make sure I understand it.</p> <p>9 (Whereupon, a portion of the record</p> <p>10 was read back.)</p> <p>11 Q. You're saying "the bill." What,</p> <p>12 specifically, are you talking about?</p> <p>13 A. So there would be a legal bill for</p> <p>14 Orly's services that would come in to me, say,</p> <p>15 for \$300,000, is one example I recall. Arie</p> <p>16 would have lent Orly \$200,000, and you know,</p> <p>17 wire that money into my account. And Orly</p> <p>18 would wire 100,000 into my account. When I put</p> <p>19 the receipt of both of those funds, I would</p> <p>20 have adequate funds to then pay the Zeichner</p> <p>21 bill.</p> <p>22 Q. And the documents you produced</p> <p>23 pursuant to our subpoenas, which we'll look at</p> <p>24 in a moment, those will reflect all monies</p> <p>25 incoming from either Orly or Arie for the</p>	<p style="text-align: right;">Page 44</p> <p>1 A. Yes, sir.</p> <p>2 Q. And Arie might've been either</p> <p>3 personally, or might've been through his</p> <p>4 entity, I think he calls it AGA?</p> <p>5 A. It's called AGA, and my sense is</p> <p>6 most of the funds came in from AGA.</p> <p>7 Q. Did Arie or Orly ever use any other</p> <p>8 entities that they're associated with to pay --</p> <p>9 to give you money to pay her legal bills?</p> <p>10 A. To pay Orly Genger legal bills, to</p> <p>11 the best of my knowledge, the only source of</p> <p>12 funds to pay those bills came either from Arie</p> <p>13 or his entity or from Orly.</p> <p>14 Q. Okay. And when money came in, how</p> <p>15 did you know how to disburse it? For example,</p> <p>16 the \$300,000 bill comes in from, say, Zeichner</p> <p>17 maybe, and you get some money from Orly and</p> <p>18 some from Arie. Were you given instructions as</p> <p>19 to how to spend money when it came -- to whom</p> <p>20 to direct the money when it came in?</p> <p>21 A. Well, I would get monthly bills and</p> <p>22 I would have a monthly requirement, so it was</p> <p>23 pretty straightforward. I would either call</p> <p>24 Arie or I would call Bill Fisher or I would, on</p> <p>25 occasion, speak to Orly and say we have these</p>

<p style="text-align: right;">Page 45</p> <p>1 bills, and it was really done that way. 2 Q. Okay. You produced, I think, one 3 e-mail with regard to the payment of one set of 4 bills. I can't remember when it was, but -- 5 but other than what you've produced, do you 6 have any written instructions from either Arie 7 or Orly with regard to the designation or use 8 of proceeds they delivered to your office for 9 legal bills? 10 A. I have communications with Arie 11 about the loan and draw down on the loan. 12 Sure. 13 Q. Well, again, anything with regard 14 to the loan, we would ask that if you view it 15 as privileged, it be logged, so we can 16 adequately determine whether or not we agree. 17 Now, the subpoena also sought 18 documents relating to a 2013 settlement 19 agreement. Are you generally familiar with the 20 2013 litigation settlement agreement that Arie 21 and Orly entered into with the Brosers and the 22 Trumps? 23 A. Yes. 24 Q. Okay. Just broadly speaking, did 25 your firm, or you, play a role with regard to</p>	<p style="text-align: right;">Page 47</p> <p>1 this agreement? 2 A. I don't recall who drafted this 3 agreement. 4 Q. Was it your firm? 5 A. I don't think we were the primary 6 drafter of this agreement. 7 Q. Okay. 'Cause I can represent that 8 we took Mr. Broser's deposition, and he thought 9 it was your firm that drafted it? 10 A. You know, it's possible. I'm not 11 going to rule out, but I don't recall it. 12 Q. Okay. Do you know if Mr. Broser 13 had an attorney in connection with the trust 14 agreement? 15 A. I don't recall dealing with any 16 attorney for Mr. Broser regarding this 17 agreement. 18 Q. What about Arie and Orly, did they 19 have any other attorneys involved in this trust 20 agreement? 21 A. No. I believe it would have been 22 me. 23 Q. Okay. So if it wasn't your firm, 24 do you have any idea who else might have 25 drafted this agreement?</p>
<p style="text-align: right;">Page 46</p> <p>1 that, that settlement agreement? 2 A. I played -- strike that. 3 I discussed the settlement 4 agreement with Arie. My firm had no drafting 5 role in that agreement. 6 Q. Okay. Okay. So in regard to that 7 agreement, which parties, if any, did -- to the 8 agreement did you represent? 9 A. I represented Arie in that 10 agreement. I represented Arie in that 11 agreement. 12 Q. Not Orly? 13 A. I don't recall if I communicated 14 with Orly about that agreement at that time. 15 Q. Okay. 16 A. I do recall communicating with 17 Arie. 18 MR. DELLAPORTAS: Okay. Let's mark 19 as Harris 4 a document labeled Genger 20 litigation trust agreement. 21 (Whereupon, Harris Exhibit 4, 22 Genger litigation trust agreement, was marked 23 for identification as of this date by the 24 reporter.) 25 Q. My first question is: Who drafted</p>	<p style="text-align: right;">Page 48</p> <p>1 A. Well, that's where I sort of get 2 stuck. Absent it being Mr. Broser, it likely 3 would have been my firm then, 'cause I don't 4 recall any other attorney. 5 Q. And you're appointed as an, it says 6 "initial trustee" under this agreement, right? 7 A. Yes. 8 Q. Are you still a trustee under this 9 trust? 10 A. I have no idea. 11 Q. Okay. And let me just -- have you 12 seen this document before? 13 A. Yes. 14 Q. Okay. So do you have an 15 understanding as to what its purpose is? 16 A. I have an understanding that this 17 was a catchall for litigation proceeds. 18 Q. What do you mean by that? 19 A. There were -- again, I haven't read 20 this document in a while, but my understanding, 21 it identifies a couple of litigations, and 22 should proceeds be realized from those 23 litigations, that those proceeds would come in 24 to this trust. 25 Q. Okay. And which litigations?</p>

<p style="text-align: right;">Page 49</p> <p>1 A. I'd have to look.</p> <p>2 Q. Do you have a recollection?</p> <p>3 A. I don't.</p> <p>4 Q. Okay.</p> <p>5 A. Again, this is seven years ago at</p> <p>6 this point.</p> <p>7 Q. Okay. And when you said the money</p> <p>8 would be used for -- I'm sorry.</p> <p>9 A. I don't know that I said what the</p> <p>10 money would be used for.</p> <p>11 MR. DELLAPORTAS: Could you just</p> <p>12 read back the last answer, the one before I'm</p> <p>13 sorry. The substantive answer.</p> <p>14 (Whereupon, a portion of the record</p> <p>15 was read back.)</p> <p>16 Q. And what was your understanding as</p> <p>17 to what was to become of the proceeds once they</p> <p>18 came into the trust?</p> <p>19 A. If they were related -- I don't --</p> <p>20 I don't want to guess. But I think as a</p> <p>21 general concept, the idea was to the extent</p> <p>22 Orly owed Arie money, that that money would be</p> <p>23 paid. And to the extent that Arie owed the</p> <p>24 Brosers money, pursuant to his loan, that that</p> <p>25 would be paid, is my best sense. And once</p>	<p style="text-align: right;">Page 51</p> <p>1 tranches. One of the tranches, I believe, was</p> <p>2 a \$10 million tranche, was sort of identified</p> <p>3 for the Orly, quote-unquote, the Orly shares.</p> <p>4 Again, this is going back a long way. And that</p> <p>5 was Orly's tranche, or proceeds from that</p> <p>6 settlement agreement. And that had not been</p> <p>7 actualized. I think Orly lost that case, if I</p> <p>8 remember correctly, but I know that 10 million</p> <p>9 never got paid. So none of the Orly proceeds</p> <p>10 ever made it through the trust. It was really</p> <p>11 just the Arie proceeds, which I believe just</p> <p>12 about all of them, and if you show me</p> <p>13 documents, I'm happy to go through them with</p> <p>14 you, but I believe just about all of those</p> <p>15 proceeds went to pay the Brosers.</p> <p>16 Q. So the settlement agreement, if you</p> <p>17 may recall, identifies at least \$50 million in</p> <p>18 settlement proceeds, correct?</p> <p>19 A. Yes, sir.</p> <p>20 Q. So you're saying --</p> <p>21 A. Wait. I think it identifies 50</p> <p>22 million. I don't know that at least 50. I</p> <p>23 don't know that there's an option for more.</p> <p>24 Q. I forget whether there was a few</p> <p>25 dollars extra, is all I meant.</p>
<p style="text-align: right;">Page 50</p> <p>1 everyone's loan obligations would be -- then it</p> <p>2 would be otherwise distributed, was sort of my</p> <p>3 10,000-foot recollection of it.</p> <p>4 Q. Okay. And are you aware that</p> <p>5 there's a bank account with Northern Trust Bank</p> <p>6 associated with this trust?</p> <p>7 A. Only as -- only from this</p> <p>8 litigation.</p> <p>9 Q. Okay. But you're a cosignatory on</p> <p>10 that account?</p> <p>11 A. If -- I believe you if you tell me</p> <p>12 I am. I have never drawn money for my own</p> <p>13 benefit on that account.</p> <p>14 Q. Fair enough. Have you authorized</p> <p>15 payments from that account?</p> <p>16 A. I believe some of the settlement</p> <p>17 proceeds from the Trump settlement went into</p> <p>18 that account, and then was used to repay Arie's</p> <p>19 debts to the Brosers, if I'm not mistaken.</p> <p>20 Q. Okay.</p> <p>21 A. I think the Arie portion of the</p> <p>22 settlement proceeds went into that trust.</p> <p>23 Q. When you say the "Arie portion,"</p> <p>24 what do you mean by that?</p> <p>25 A. The settlement agreement was in</p>	<p style="text-align: right;">Page 52</p> <p>1 A. I think it's 50. I think it's</p> <p>2 exactly 50.</p> <p>3 Q. You may be right. So, are you</p> <p>4 saying that other than whatever, the</p> <p>5 approximately 10 million in that escrow</p> <p>6 account, the other 40 million you viewed as the</p> <p>7 Arie proceeds under the settlement agreement?</p> <p>8 A. Yes, sir.</p> <p>9 Q. So the 40 million is attributable</p> <p>10 to the Arie shares?</p> <p>11 A. Was attributable to the Arie shares</p> <p>12 and the Arie litigation. My best recollection</p> <p>13 is we settled, and I use the royal "we," so</p> <p>14 excuse me, but that Arie settled that matter on</p> <p>15 the eve of either going to the Delaware Supreme</p> <p>16 Court or getting the Delaware Supreme Court</p> <p>17 decision in his primary case against the</p> <p>18 Trumps, and that everyone viewed it as right</p> <p>19 for settlement at that point, without that</p> <p>20 decision being realized. And, again, I don't</p> <p>21 remember if briefs had been filed or were about</p> <p>22 to be filed, but I recall that this was going</p> <p>23 to be our second time up in the Delaware</p> <p>24 Supreme Court.</p> <p>25 Q. Where in writing, if anywhere, is</p>

<p style="text-align: right;">Page 53</p> <p>1 it reflected that of the \$50 million in 2 settlement proceeds, 40 million were for Arie 3 and 10 million or so were for Orly? 4 A. Well, I believe the settlement 5 agreement identifies and carves out those 6 \$10 million in a separate tranche. It's not a 7 distribution waterfall, but I believe there are 8 subparagraphs that identify 17 million, 10 9 million, 15 million, something like that. 10 Don't quote me on the exact numbers. But I 11 know that \$10 million was subidentified 12 specifically for the purposes, and that money, 13 as you just reminded me, was being held in 14 escrow for Orly. So -- or if Orly had won her 15 case, you know, I believe. So I think the 16 document on its face pretty well identifies 17 those funds. 18 Q. Okay. The settlement agreement 19 says whatever it says, and we can take a look. 20 A. Sure. 21 Q. Other than the settlement 22 agreement, is there any writing anywhere -- I 23 don't mean a formal agreement; it can be an 24 e-mail, letter, note on a cocktail napkin, 25 anywhere which reflects the allocation of</p>	<p style="text-align: right;">Page 55</p> <p>1 down the hall ask Yoav for the memo. But I do 2 recall the conversation, because I believe the 3 agreement was signed in the summer. 4 Q. Uh-huh. 5 A. And I was in Saratoga, New York, on 6 the phone with Yoav and Bryan -- so yes, I can 7 certainly ask them. But I recall drafting the 8 memo. I recall having an extensive 9 conversation on the memo with them. And that 10 is my best recollection. 11 Q. Okay. So Orly's attorneys were 12 aware at the time that the only proceeds she 13 was to receive under the 2013 settlement 14 agreement was whatever she could obtain by -- 15 in litigation for the \$10.3 million trust 16 account? 17 A. Orly's attorneys absolutely were 18 aware -- well, strike that. 19 I don't want to waive any 20 privilege, so I'm not going to answer that 21 question unless can you explain to me why it's 22 not a privileged communication. 23 Q. Because you said in connection with 24 the settlement agreement, you represented Arie, 25 not Orly. So Orly was represented by the</p>
<p style="text-align: right;">Page 54</p> <p>1 \$50 million settlement proceeds that you have 2 just described, as between Arie and Orly 3 Genger? 4 A. I recall, although I cannot find, 5 and I have searched, drafting a memo outlining 6 -- and I remember discussing this memo vividly, 7 'cause I was in Saratoga, and I was on the 8 phone with Arie and then Yoav and Bryan 9 Linebach, discussing this settlement and Orly 10 getting the \$10 million. I have searched high 11 and low for this memo, as you could imagine it 12 would be helpful to your case in resolving this 13 issue. I have not yet found it. 14 Q. Now, you said you sublease space 15 from Zeichner Ellman, correct? 16 A. Yes, sir. 17 Q. Or license, I forget. 18 A. Yes, it is a license. 19 Q. Did you walk down the hall and ask 20 Zeichner Ellman if they have a copy of this 21 memo? 22 A. Did I ask them if they had a copy 23 of the memo, you know, I have not done that. I 24 did not even think to do that, to be honest 25 with you. I'm happy to go do that. I can walk</p>	<p style="text-align: right;">Page 56</p> <p>1 Zeichner firm. So this would be -- 2 A. I believe she was also represented 3 by Bill Wachtel. 4 Q. That's fine. 5 A. If I'm not mistaken. 6 Q. But not you. And so this would be 7 a communication between parties? 8 A. Opposing attorneys. 9 Q. So I will say this: To the extent 10 you answer the question, I won't deem it as a 11 waiver of privilege. 12 A. I appreciate it. Thank you very 13 much. They absolutely, 100 percent, 14 unequivocally, knew that that was her proceeds, 15 the 10.3, and that was all her proceeds. 16 Q. And those were the only proceeds 17 she was going to get under that particular 18 agreement? 19 A. Can you repeat the question. 20 (Whereupon, a portion of the record 21 was read back.) 22 A. That was the only proceeds she was 23 going to get under that agreement. 24 MR. DELLAPORTAS: Okay. You've 25 been going for a while. I know you have a</p>

<p style="text-align: right;">Page 57</p> <p>1 rough voice, so let's take a ten-minute break.</p> <p>2 THE WITNESS: Great.</p> <p>3 (Whereupon, a recess was taken.)</p> <p>4 Q. (By Mr. Dellaportas) Turn to the</p> <p>5 last page on the Harris Exhibit 4 the trust</p> <p>6 agreement.</p> <p>7 A. Yes.</p> <p>8 Q. Do you see it says -- appears to be</p> <p>9 an amendment with regard to fees paid to the</p> <p>10 Wachtel firm?</p> <p>11 A. Yes.</p> <p>12 Q. Do you recall what, if anything,</p> <p>13 was paid out of the settlement proceeds to the</p> <p>14 Wachtel firm?</p> <p>15 A. I have no idea.</p> <p>16 Q. Okay. Do you know if there was</p> <p>17 ever fees paid to the Wachtel firm in</p> <p>18 connection with the 2013 settlement agreement?</p> <p>19 A. I had nothing to do with -- I've</p> <p>20 never paid the Wachtel firm out of my IOLA</p> <p>21 account, as you see from the checks. I'd first</p> <p>22 seen this document in connection with this</p> <p>23 litigation. I was not involved in the drafting</p> <p>24 or negotiation or any aspect of this agreement,</p> <p>25 nor do I know if anything's ever been paid out</p>	<p style="text-align: right;">Page 59</p> <p>1 Q. What do you recall specifically</p> <p>2 about that?</p> <p>3 A. I specifically recall that since</p> <p>4 Bill was no longer involved in the case, and</p> <p>5 the Kasowitzes had taken on full responsibility</p> <p>6 for Orly -- strike that.</p> <p>7 I recall that Bill Wachtel was no</p> <p>8 longer involved in the case, and we needed</p> <p>9 someone else to receive the proceeds.</p> <p>10 Q. Okay. So if I could just direct</p> <p>11 your attention back to your second subpoena.</p> <p>12 A. Sure. Is that No. 2?</p> <p>13 Q. The thicker one, yeah. Harris 2.</p> <p>14 A. Okay.</p> <p>15 Q. And specifically to Exhibit B to</p> <p>16 that subpoena.</p> <p>17 A. Sure. Hold on.</p> <p>18 Q. That's the \$2 million promissory</p> <p>19 note we looked at earlier.</p> <p>20 A. Getting there. Got it.</p> <p>21 Q. And specifically page 5 of that</p> <p>22 document.</p> <p>23 A. Yes.</p> <p>24 Q. And subsection F of that document</p> <p>25 -- on that page.</p>
<p style="text-align: right;">Page 58</p> <p>1 of it.</p> <p>2 Q. Are you aware of, more generally,</p> <p>3 of any kind of fee discussions or fee dispute</p> <p>4 involving the Wachtel firm?</p> <p>5 A. No. I cannot disavow this enough.</p> <p>6 I know nothing of it.</p> <p>7 Q. Okay. Fair enough.</p> <p>8 Are you aware of a 2017 agreement</p> <p>9 by which Arie and Orly agreed to put certain of</p> <p>10 the future settlement proceeds in escrow?</p> <p>11 A. Only in connection with this</p> <p>12 litigation.</p> <p>13 Q. Meaning what?</p> <p>14 A. Meaning I received a copy of your</p> <p>15 letter filed yesterday --</p> <p>16 Q. Yes.</p> <p>17 A. -- that identified this document.</p> <p>18 Q. Okay. You were unaware of that</p> <p>19 2017 agreement prior to my letter?</p> <p>20 A. I was generally unaware. I don't</p> <p>21 ever recall, to this date, reading that</p> <p>22 agreement. And the only thing I was aware of,</p> <p>23 that I recall being aware of contemporaneously,</p> <p>24 is that changing out the escrow agent from Bill</p> <p>25 Wachtel to Michael Bowen.</p>	<p style="text-align: right;">Page 60</p> <p>1 A. Yes.</p> <p>2 Q. And it references that certain</p> <p>3 agreement dated as of March 31, 2017, between</p> <p>4 the borrowers, David Broser, the lender and the</p> <p>5 escrow agent named therein; do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. When you saw this note, did you</p> <p>8 inquire as to what that agreement was?</p> <p>9 A. I did not.</p> <p>10 Q. Did you not notice at the time?</p> <p>11 Were you not interested? Or what was going on</p> <p>12 there?</p> <p>13 A. Either A, B, or all of the above.</p> <p>14 Q. You don't remember?</p> <p>15 A. I don't.</p> <p>16 Q. Now, with regard to the \$2 million</p> <p>17 note that we're looking at, did you find it</p> <p>18 curious or strange that a married couple would</p> <p>19 execute a \$2 million promissory note between</p> <p>20 themselves during the -- just a few months into</p> <p>21 their marriage?</p> <p>22 A. Not at all.</p> <p>23 Q. Okay. Did you --</p> <p>24 A. My wife's a matrimonial lawyer</p> <p>25 dealing with high net worth people. I've seen</p>

<p style="text-align: right;">Page 61</p> <p>1 promissory notes, I've seen all sorts of 2 things. And I should say my ex-wife, 'cause 3 I've also recently gotten divorced. So, yes, I 4 do not find that the least bit odd. 5 Q. Okay. Now, the other note, I'll 6 call it the \$5 million note, since there were 7 ten earlier notes reflecting the exact same 8 amount of debt, why were they all consolidated 9 into a single note at that time? 10 A. I think I had requested that in 11 order to file -- to make it easier to file the 12 UCCs. And I just thought it would be easier to 13 have it in one number. 14 Q. Now, the UCCs don't reflect any 15 amount of debt at all; do they? 16 A. I don't recall. I'm looking at 17 them -- I have to look at them right now. My 18 best recollection is when you file a UCC, you 19 would identify the basis of the debt upon which 20 you're filing the UCC. 21 Q. So why not just attach the ten 22 notes? 23 A. It's obviously burdensome. You 24 miss one. It's just easier to have a 25 consolidated note. I do this with clients all</p>	<p style="text-align: right;">Page 63</p> <p>1 didn't have to, but it was prepared in 2 anticipation of filing it with the UCC. I did 3 not recall or realize it had not been. 4 Q. Okay. 5 A. Until your representation, which I 6 obviously believe. 7 Q. Now, you mentioned a few times a 8 messenger service. 9 A. Yes. 10 Q. What messenger service do you use 11 at your firm? 12 A. I use -- there are ZEK, or 13 Zeichner, messengers that deliver messages. 14 Q. I see. So they're like internal 15 Zeichner Ellman messengers? 16 A. Yes. 17 Q. They bill you for it? 18 A. They bill me for it, yes. 19 Q. And other than in the context with 20 the current discovery disputes, have you had 21 communications over the years with Mitchell 22 Goldberg? That would be the lawyer for David 23 Broser. 24 A. Other than in the current 25 conversations over the years. I think the</p>
<p style="text-align: right;">Page 62</p> <p>1 the time. It's not an unusual process. 2 Q. So it was -- 3 A. I mean, if -- in the ordinary 4 course, I would take Orly's current additional 5 notes, and then have a second amended and 6 consolidated secured promissory note, is 7 probably best practices right now. 8 Q. The actual notes are not attached 9 to any of your UCC filings; is it? 10 A. Again, I'm still looking at that. 11 I think it was. I'd be surprised if it wasn't. 12 I'm just trying to see any indication that it 13 was. I am sure it was attached to the filing. 14 Q. Do you have any record of actually 15 providing that, that note to any of the states 16 in which you filed the UCC? 17 A. Well, I have the UCC and the note 18 here, so I have no indication it wasn't 19 attached. 20 Q. I can represent to you that we've 21 reviewed all the UCC filings and we don't see 22 any reference to the note or to a dollar amount 23 in any of these files. 24 A. Okay. So then I will have to 25 acquire -- perhaps it was not required and we</p>	<p style="text-align: right;">Page 64</p> <p>1 first time I spoke to him is in connection with 2 this litigation. 3 Q. Okay. What about have you ever 4 heard of a law firm called Richards Kibbe? 5 A. No. 6 Q. Are you familiar with a 2007 Genger 7 family trust? I'm sorry, Orly Genger family 8 trust. I left out a word, a critical word, 9 Orly Genger family trust? 10 A. A 2007 Orly Genger family trust. I 11 don't. My best answer is maybe. 12 Q. Okay. Next, I'd like to mark a 13 document production you made on February 8, 14 2019, as Harris Exhibit 5. 15 (Whereupon, Harris Exhibit 5, 16 February 8, 2019, production, was marked for 17 identification as of this date by the 18 reporter.) 19 Q. Mr. Harris, if you can actually 20 just go to Exhibit B. It's about halfway 21 through the stack. 22 A. Exhibit B is halfway through the 23 stack. Yes. I don't have it yet. Oh, Exhibit 24 B. Yeah, Exhibit B. 25 Q. I'm just hoping you can walk me</p>

<p style="text-align: right;">Page 65</p> <p>1 through what's in Exhibit B here.</p> <p>2 A. Well, I think this is the same copy</p> <p>3 of the New Jersey UCC filing I, again, produced</p> <p>4 yesterday.</p> <p>5 Q. Okay. And then two pages later is</p> <p>6 the Texas UCC filing?</p> <p>7 A. And then the Texas UCC filing.</p> <p>8 Q. Okay. So neither of those either</p> <p>9 references the amount of the secured debt or</p> <p>10 attaches the note, correct?</p> <p>11 A. I'm taking your representation. It</p> <p>12 was my intent to attach it, and I can only</p> <p>13 presume it was not required, so it wasn't</p> <p>14 attached. But until today, I would have told</p> <p>15 you it was attached.</p> <p>16 Q. Okay. And then the next document</p> <p>17 in Exhibit B is just the \$5.3 million note we</p> <p>18 looked at, correct?</p> <p>19 A. Yes.</p> <p>20 Q. Let's get past that.</p> <p>21 A. We, for some reason, have another</p> <p>22 copy of the New Jersey filing, and another copy</p> <p>23 of the Texas filing, and then we have a \$21,000</p> <p>24 note.</p> <p>25 Q. Okay. The \$21,000 note is dated</p>	<p style="text-align: right;">Page 67</p> <p>1 these all the same filings?</p> <p>2 Q. I don't know whether they're</p> <p>3 successive filings or the same copies of</p> <p>4 filings.</p> <p>5 A. Well, let's just spend a minute,</p> <p>6 because there is a filing number and a date on</p> <p>7 them.</p> <p>8 Q. Yes.</p> <p>9 A. And I'm just curious. No, they're</p> <p>10 not all of the same filing.</p> <p>11 Q. Okay. So is there --</p> <p>12 A. There are different file number and</p> <p>13 they have different time stamps in.</p> <p>14 Q. Understood. So is there a reason</p> <p>15 you made multiple filings within the same state</p> <p>16 for what looks, at least, very similar --</p> <p>17 A. Because, as I said earlier, with</p> <p>18 not having appreciated that fact, I was under</p> <p>19 the impression, which obviously I was wrong,</p> <p>20 that the initial filing was for that \$5 million</p> <p>21 note, and then I just got in the habit of every</p> <p>22 time there was a note including a different</p> <p>23 filing, which if there was no dollar amount or</p> <p>24 note attached, I clearly didn't have to.</p> <p>25 Q. Okay. So the second filing was for</p>
<p style="text-align: right;">Page 66</p> <p>1 March 27, 2018?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And do you recall about when that</p> <p>4 was signed by Ms. Genger?</p> <p>5 A. I don't. I would presume sometime</p> <p>6 thereafter.</p> <p>7 Q. Okay. And do you know why, since</p> <p>8 the 2016 note was only signed at least a month</p> <p>9 after this document, the \$21,000 debt was not</p> <p>10 included in that note?</p> <p>11 A. Yes. As I said earlier, we had</p> <p>12 some certain due and owing from Arie to Orly</p> <p>13 through '16, and I wanted to preserve that and</p> <p>14 roll up those other notes to that subcertain.</p> <p>15 I didn't have all of the '17 data available to</p> <p>16 me at that time, nor did I have all of the '18</p> <p>17 data, and I like to do things by calendar year,</p> <p>18 just cleaner.</p> <p>19 Q. If we could skip past the note to</p> <p>20 the next --</p> <p>21 A. Sure.</p> <p>22 Q. Looks like another UCC filing</p> <p>23 statement. Maybe another copy of the New</p> <p>24 Jersey UCC.</p> <p>25 A. With all these UCC filings, are</p>	<p style="text-align: right;">Page 68</p> <p>1 the second \$58,000?</p> <p>2 A. Right. My sense is the filings by</p> <p>3 date and time are indicative of attached to a</p> <p>4 note, but clearly, the notes weren't attached.</p> <p>5 Q. Okay. They all seem to be filed --</p> <p>6 A. I could have saved myself money and</p> <p>7 time --</p> <p>8 Q. Sure.</p> <p>9 A. -- by just keeping this to one note</p> <p>10 -- one filing.</p> <p>11 Q. They all seem to be filed on</p> <p>12 August 3rd?</p> <p>13 A. They do, just different times for,</p> <p>14 I don't know why, but --</p> <p>15 Q. Okay.</p> <p>16 A. I assume I had all of the notes</p> <p>17 signed and with me and it was just easier to</p> <p>18 file them all at the same time.</p> <p>19 Q. So then next, if we get -- skip</p> <p>20 past the UCCs, we see another note for \$58,000</p> <p>21 dated April 23rd, 2018. Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Do you recall when Orly signed this</p> <p>24 document?</p> <p>25 A. I don't, but, again, I presume if</p>

<p style="text-align: right;">Page 69</p> <p>1 it was attached to the filing signed -- filing 2 filed on the same date, August 3rd, it was 3 sometime prior between that April date and the 4 August date. 5 Q. Other than the UCCs you've produced 6 to us, did your firm file any other UCCs on 7 behalf of Arie or Orly Genger? 8 A. On behalf of Arie or Orly? 9 Q. I should say Arie Genger. 10 A. Okay. Have I filed any other UCCs 11 on behalf of Arie? As it relates to Orly or as 12 it relates to any matter? 13 Q. Just as it relates to Orly? 14 A. No. These -- except for the ones 15 that we attempted to file -- 16 Q. Sorry. 17 A. No worries. 18 (Whereupon, a portion of the record 19 was read back.) 20 A. If she was an Israeli citizen, 21 these were the only UCCs that we filed. And I 22 don't know if the DC one ever fully went 23 through. 24 MR. DELLAPORTAS: Let's next mark 25 as Harris Exhibit 6, a thick production that</p>	<p style="text-align: right;">Page 71</p> <p>1 period end of 2008 through '15, which is an 2 exhaustive, but not complete list of all the 3 fees paid on behalf of Orly that represent the 4 \$5.3 million note, but as indicated to the 5 court, indicative and a substantial portion of 6 that amount. 7 Q. Okay. And I think the note was 8 through 2016; wasn't it? 9 A. Yes, sir. 10 Q. And so why aren't there 2016 11 numbers on this chart? 12 A. My recollection of our call with 13 the Court was '17 through '15. I couldn't find 14 seven, and this represents, as indicated, 15 approximately 4.5 of the 5.3, so I thought it 16 was more than representative of the total of 17 the Orly debt to Arie. 18 Q. Okay. And then underneath it are 19 all the checks that are referenced herein? 20 A. I believe so. 21 Q. That was your intention? 22 A. That was my intention. 23 Q. Fair enough. When you describe 24 those as loans, on what do you base your belief 25 that the money for each of these came from Arie</p>
<p style="text-align: right;">Page 70</p> <p>1 Mr. Harris made to us, the first page of which 2 reads "Genger payments IOLA 4/24/19." 3 (Whereupon, Harris Exhibit 6, 4 Genger payments IOLA 4/24/19, was marked for 5 identification as of this date by the 6 reporter.) 7 A. I just want to say, upon reviewing 8 the Exhibit No. 5, my best sense is in each of 9 the UCC filings in each of the states, we 10 attached the note that it corresponded to that 11 filing. I don't know why the state has not 12 registered that note. But my best recollection 13 is that we did, in fact, attach the note to 14 each of the filings. 15 Q. So if you could tell me what the 16 chart, which is on the first four pages of 17 Exhibit 6, if you could tell me what this 18 document is? 19 A. Sure. We had a meeting confer with 20 the Court about producing checks that were -- 21 that represented a goodly portion of the 22 \$5.3 million note. That paid legal fees from 23 my IOLA account. So this represents my search 24 of my records of my IOLA account that 25 represented loans from Arie to Orly for the</p>	<p style="text-align: right;">Page 72</p> <p>1 Genger? 2 A. I would receive funds -- unless 3 otherwise indicated, I would receive funds from 4 Arie for Orly's loans to pay Orly's legal fees. 5 Q. So you -- 6 A. Money would come into my IOLA 7 account. 8 Q. So you had indicated that in some 9 circumstances, Orly would pay directly? 10 A. In some circumstances, Orly would 11 pay directly or -- but those would be fees that 12 would not come through my office. 13 Q. Okay. In any circumstances, did 14 Orly pay you to pay legal fees? 15 A. Yes. 16 Q. And where's that reflected on this 17 chart? 18 A. That's reflected in -- a good 19 example of that is, like in -- by way of 20 example, on the May 2015, check number 2798. 21 Q. I'm sorry, what was the date? 22 A. I'm sorry. May 2015. It's at the 23 bottom of page 3, the last one. 24 Q. Okay. 25 A. It's to the Kasowitz firm.</p>

<p style="text-align: right;">Page 73</p> <p>1 Q. Yes.</p> <p>2 A. It was \$313,000.</p> <p>3 Q. You made a check out for 313,000?</p> <p>4 A. Correct. Which should be reflected</p> <p>5 in the attachment.</p> <p>6 Q. But you're saying that Arie only</p> <p>7 loaned the \$99,950?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And the rest came from Orly?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And so is that the case with each</p> <p>12 of the ones where you have a note?</p> <p>13 A. No.</p> <p>14 Q. Okay. 'Cause I note that in each</p> <p>15 -- in each of the cases where you have a note,</p> <p>16 that the outbound check is for more than the</p> <p>17 amount that you've logged, correct?</p> <p>18 A. Correct. There are notes for each</p> <p>19 time the amount of money I received as loan</p> <p>20 proceeds from Arie for the benefit of Orly,</p> <p>21 where the check is greater, I've indicated</p> <p>22 that. But not in each of those cases is the</p> <p>23 difference made up of money from Orly.</p> <p>24 Q. So who made up the difference in</p> <p>25 the other cases?</p>	<p style="text-align: right;">Page 75</p> <p>1 represented payments by Orly to me. In the</p> <p>2 earlier ones, I'd have to go back to my notes</p> <p>3 when I had prepared this to give you that</p> <p>4 detail. And I believe in the December '09, by</p> <p>5 giving way of a different example, the</p> <p>6 difference, at one point ZEK wasn't breaking up</p> <p>7 their bills, so that check represented a couple</p> <p>8 of matters, including, I believe, the apartment</p> <p>9 trust matter, so that this only represented the</p> <p>10 representation for Orly.</p> <p>11 Q. I see.</p> <p>12 A. The 31558.</p> <p>13 Q. Who paid the bills for the</p> <p>14 apartment trust matter?</p> <p>15 A. I believe Arie lent the trust</p> <p>16 money.</p> <p>17 Q. Okay. At a certain point, the</p> <p>18 trust prevailed in that litigation, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And it obtained clear title to the</p> <p>21 two apartments, correct?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And then it sold those apartments</p> <p>24 to third parties, correct?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 74</p> <p>1 A. Good question. So in the other</p> <p>2 cases, some of it was for fees that were not</p> <p>3 Orly's responsibility, that were paid directly</p> <p>4 by -- paid by Arie. By way of example, Sal</p> <p>5 Walker, August 2014, check 2711. The Orly</p> <p>6 portion was 11830. The difference was the Arie</p> <p>7 portion. And so I only recorded the Orly</p> <p>8 portion.</p> <p>9 Q. I see. I see. So in some</p> <p>10 instances, these were shared representations</p> <p>11 and the bills were split?</p> <p>12 A. Correct.</p> <p>13 Q. Do you recall which instances were</p> <p>14 -- reflect direct payments by Orly versus which</p> <p>15 instances reflect some sort of fee sharing</p> <p>16 arrangement between Arie and Orly, with regard</p> <p>17 to those checks that have notes by them?</p> <p>18 A. Okay. Again, the direct -- when</p> <p>19 you say "direct payment by Orly," I just want</p> <p>20 to be clear.</p> <p>21 Q. I'm sorry, direct payment to you to</p> <p>22 pay Orly?</p> <p>23 A. That's okay. I don't. I know the</p> <p>24 Kasowitz one. I know the ZEK, for the May 2015</p> <p>25 ZEK one, and I know the September 2015 ZEK all</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. What became of the proceedings?</p> <p>2 A. Beyond the scope. I'm not going to</p> <p>3 answer. Pick something. Pick a choice. That</p> <p>4 has nothing to do with this.</p> <p>5 Q. Is Orly not a beneficiary of the</p> <p>6 apartment trust?</p> <p>7 A. I don't recall the terms of the</p> <p>8 apartment trust.</p> <p>9 Q. Are you the trustee, one of the</p> <p>10 trustees to the apartment trust?</p> <p>11 A. I don't believe I am a trustee of</p> <p>12 the apartment trust.</p> <p>13 Q. And why do you believe it's not</p> <p>14 beyond the scope of the -- why do you believe</p> <p>15 it's beyond the scope of the deposition?</p> <p>16 A. Because this is about proceeds --</p> <p>17 this is about the collection of monies from</p> <p>18 Orly, not about her being a beneficiary of a</p> <p>19 trust and what's in that trust.</p> <p>20 Q. Okay. Let me refine it. Has</p> <p>21 either Orly or any of Orly's lawyers or other</p> <p>22 creditors received any proceeds from the</p> <p>23 apartment trust?</p> <p>24 A. Not that I'm aware of.</p> <p>25 Q. With regard to -- let's just focus</p>

<p style="text-align: right;">Page 77</p> <p>1 on 2014 and 2015, if we can.</p> <p>2 A. Sure.</p> <p>3 Q. So in 2014, there's a bill to</p> <p>4 Kasowitz?</p> <p>5 A. Let me get there. In 2014,</p> <p>6 there's a --</p> <p>7 Q. There's a check made out to</p> <p>8 Kasowitz from your firm for \$313,000?</p> <p>9 A. In '15, not '14.</p> <p>10 Q. I apologize. May 2015?</p> <p>11 A. Yes.</p> <p>12 Q. And of that, that's Arie loaned</p> <p>13 99,950, there about?</p> <p>14 A. Yes, sir.</p> <p>15 Q. The rest was paid by Orly?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Where did -- what was the source of</p> <p>18 the Orly payment?</p> <p>19 A. I'm sorry. A wire came into my</p> <p>20 account from Orly.</p> <p>21 Q. Okay. We would ask you to produce</p> <p>22 that, that wire.</p> <p>23 Same with -- you see two more notes</p> <p>24 for Zeichner Ellman where the check amount you</p> <p>25 paid was greater than the Arie loan amount?</p>	<p style="text-align: right;">Page 79</p> <p>1 gotten different checks at different times, but</p> <p>2 the Harris 6 is intended to be a comprehensive</p> <p>3 set of all the checks, and the others are</p> <p>4 duplicative; is that correct?</p> <p>5 A. In Harris Exhibit 7, compared to 6,</p> <p>6 for 14, that is the intent, except in 7, you</p> <p>7 have the back of the checks. You don't have</p> <p>8 the back of the checks in Harris 6. And in</p> <p>9 Harris 8, you have checks that are not in 6</p> <p>10 that were intended to evidence -- strike that.</p> <p>11 In Harris 8, I believe are the same</p> <p>12 checks as in Harris 6. At one point, you got</p> <p>13 additional checks to evidence that the wire</p> <p>14 that came to my IOLA account that included</p> <p>15 settlement proceeds from the 2013 settlement</p> <p>16 went to pay Arie's legal fees. So you had</p> <p>17 checks that were related to Arie's legal fees,</p> <p>18 but I don't see them here.</p> <p>19 Q. Okay. I think we reached an</p> <p>20 agreement where we'd back out all the checks</p> <p>21 which were not Orly related.</p> <p>22 A. Okay. That's fine. Never mind.</p> <p>23 Q. Okay.</p> <p>24 A. Do you still want me to hold 6?</p> <p>25 Q. No, I'm done with this.</p>
<p style="text-align: right;">Page 78</p> <p>1 A. In 2015, correct.</p> <p>2 Q. In each of those, was the</p> <p>3 difference made up by a payment to your firm</p> <p>4 from Orly?</p> <p>5 A. As I indicated earlier, that's my</p> <p>6 best recollection, yes.</p> <p>7 Q. So for the 2015 payments, the three</p> <p>8 wires that you appear to receive direct from</p> <p>9 Orly, we would ask that those be produced.</p> <p>10 If I could next mark another</p> <p>11 production from your firm of checks. I forget</p> <p>12 the date of it. It doesn't have a cover note.</p> <p>13 But it's for -- date of the first check, for</p> <p>14 these purposes, January 24, 2014. We can mark</p> <p>15 that as Harris Exhibit 7.</p> <p>16 (Whereupon, Harris Exhibit 7,</p> <p>17 checks, first one dated January 24, 2014, was</p> <p>18 marked for identification as of this date by</p> <p>19 the reporter.)</p> <p>20 (Whereupon, Harris Exhibit 8,</p> <p>21 checks, first one dated 7/3/13, was marked for</p> <p>22 identification as of this date by the</p> <p>23 reporter.)</p> <p>24 Q. We had a little discussion off the</p> <p>25 record. I just want to make clear that we've</p>	<p style="text-align: right;">Page 80</p> <p>1 A. Got it.</p> <p>2 MR. DELLAPORTAS: I'd like to next</p> <p>3 mark as Harris Exhibit 9 a page from a Northern</p> <p>4 Trust bank statement.</p> <p>5 (Whereupon, Harris Exhibit 9,</p> <p>6 Northern Trust bank statement, was marked for</p> <p>7 identification as of this date by the</p> <p>8 reporter.)</p> <p>9 Q. So Harris Exhibit 9 is an account</p> <p>10 statement dated August 10, 2018. And it shows</p> <p>11 a wire sent from Orly Genger in the amount of</p> <p>12 \$9,434.56 to your IOLA account; do you see</p> <p>13 that?</p> <p>14 A. I do.</p> <p>15 Q. Is there a reason no documentation</p> <p>16 was produced by you about this transaction?</p> <p>17 A. Let me go back to 6. But to the</p> <p>18 extent it was not connected with the Arie loan,</p> <p>19 it would not necessarily have been produced.</p> <p>20 Q. The first subpoena sought all</p> <p>21 documents concerning financial arrangements</p> <p>22 with Orly Genger.</p> <p>23 A. If I -- yes.</p> <p>24 Q. Also all documents concerning any</p> <p>25 assets of Orly Genger?</p>

<p style="text-align: right;">Page 81</p> <p>1 A. I presume this went out to pay a 2 bill. So it wouldn't be an asset or a 3 financial arrangement. 4 Q. Where did the money go? 5 A. You see how many checks I write, 6 you don't certainly expect that I recall what 7 happened on August 15 of 2018. 8 Q. All I know is that -- 9 A. Plus my reporting to you did not go 10 through '18. I can tell you that I responded 11 to subpoena and that I'm not holding those 12 funds. 13 Q. Yes, I get that. So I'm asking 14 what you did with those funds. 15 A. I paid a bill on behalf of Orly. 16 Q. What bill? 17 A. I can't sit here and tell you that. 18 I have no recollection. 19 Q. It was just last August. No 20 recollection? 21 A. Again, you've subpoenaed my IOLA 22 account. I have a lot of clients, and I write 23 a lot of checks out of that account. I have 24 zero recollection. I couldn't even tell you 25 what checks I wrote last month for clients.</p>	<p style="text-align: right;">Page 83</p> <p>1 A. I cannot. 2 Q. Okay. So with regard to both 3 Harris 9 and Harris 10, we would ask you to 4 produce all records associated therewith, 5 including any bills paid thereby. 6 Are these legal bills or other 7 kinds of bills? 8 A. I don't believe I ever paid 9 anything other than legal bills -- well, I paid 10 court reporting bills for Orly. Anything 11 related to litigation. I don't think I paid -- 12 I've never paid anything not related to 13 litigation, directly or indirectly. 14 MR. DELLAPORTAS: Okay. So last, 15 if we could look at Harris Exhibit 11. That's 16 a Vanguard statement. 17 (Whereupon, Harris Exhibit 11, 18 Vanguard statement, was marked for 19 identification as of this date by the 20 reporter.) 21 Q. So in this one, if you look -- this 22 is Harris 11. If you look at the second page, 23 there's a -- looks like Ms. Genger, on 24 August 10, 2018, liquidated what looks to be 25 her entire Vanguard account, \$62,000.</p>
<p style="text-align: right;">Page 82</p> <p>1 Q. Were you aware that this was just 2 two weeks after Orly had lost summary judgment 3 in the federal case? 4 A. No, I was not aware of the date of 5 the loss of the summary judgment until 6 yesterday. 7 MR. DELLAPORTAS: Okay. I'd like 8 to next mark as Harris Exhibit 10 Morgan 9 Stanley bank statement. 10 (Whereupon, Harris Exhibit 10, 11 Morgan Stanley bank statement, was marked for 12 identification as of this date by the 13 reporter.) 14 Q. If you could look at just the last 15 page of this. 16 A. Yes, sir. 17 Q. And here's another wire from Orly 18 to you. This one, August 14, 2018 for \$12,000? 19 A. Yes, sir. 20 Q. Do you still hold that money? 21 A. No. I hold no money for Orly 22 Genger. 23 Q. What became of that money? 24 A. A bill was paid. 25 Q. You can't tell us what bill?</p>	<p style="text-align: right;">Page 84</p> <p>1 A. It does. 2 Q. And wired it to an account, which, 3 according to the next page, was, again, your 4 IOLA account. Do you see that? 5 A. I'm looking. 6 Q. What became of this \$62,000? 7 A. It was -- a fee was paid. 8 Q. You have no recollection of what 9 the 62,000 was used for? 10 A. John, I really wish I could help 11 you. I don't. 12 Q. So we ask that all records 13 associated therewith also be produced. 14 MR. DELLAPORTAS: I'd like to next 15 mark as Harris Exhibit 12 a document production 16 from Stein & Harris dated September 28, 2018. 17 (Whereupon, Harris Exhibit 12, 18 document from Stein & Harris, dated 19 September 28, 2018, was marked for 20 identification as of this date by the 21 reporter.) 22 Q. So, Mr. Harris, in addition to your 23 firm, we also subpoenaed -- you were the 24 register agent for Everything Important LLC, 25 and we've served a subpoena on that entity. Do</p>

<p style="text-align: right;">Page 85</p> <p>1 you recall that?</p> <p>2 A. Yes, sir.</p> <p>3 Q. If we could look to pages 3 and 4</p> <p>4 of the document.</p> <p>5 A. Yes.</p> <p>6 Q. Can you tell us what these</p> <p>7 documents are?</p> <p>8 A. You had asked, if I recall</p> <p>9 correctly, for ownership indications for</p> <p>10 Everything Important.</p> <p>11 Q. Uh-huh.</p> <p>12 A. So I believe that schedule A would</p> <p>13 be to evidencing the initial percentage</p> <p>14 ownership, and then I believe there was a sale</p> <p>15 of some portion of that ownership from Orly to</p> <p>16 Arie Genger that resulted in Arie becoming the</p> <p>17 52 percent owner, I believe, if it's three</p> <p>18 shares, and he owned 49 before.</p> <p>19 Q. Was it your firm which prepared</p> <p>20 this bill of sale?</p> <p>21 A. No.</p> <p>22 Q. Which lawyers did that?</p> <p>23 A. I have no knowledge of that.</p> <p>24 Q. Okay. How did you come to get this</p> <p>25 document?</p>	<p style="text-align: right;">Page 87</p> <p>1 Q. So, Mr. Harris, on -- this appears</p> <p>2 to be an e-mail that Mr. Futterman forward me</p> <p>3 of what purports to be an e-mail from you to</p> <p>4 him. Do you see that, dated October 9th, 2018?</p> <p>5 A. Yes.</p> <p>6 Q. Did you, in fact, send this e-mail?</p> <p>7 A. I believe so.</p> <p>8 Q. And did you, in fact, advise</p> <p>9 Mr. Futterman that, quote, please be advised</p> <p>10 that all works of art by Orly Genger held by</p> <p>11 the gallery are owned by Everything Important,</p> <p>12 LLC?</p> <p>13 A. Correct.</p> <p>14 Q. Now, you just told me you had zero</p> <p>15 knowledge of whatever assets were owned by</p> <p>16 Everything Important. So on what basis did you</p> <p>17 make this statement?</p> <p>18 A. I still don't even know what works</p> <p>19 of art held by that gallery this references,</p> <p>20 other than knowing that any works of art</p> <p>21 prepared by Orly at this gallery were owned by</p> <p>22 Everything. Whether it's one piece or ten</p> <p>23 piece, I have no idea.</p> <p>24 Q. What's the basis of your knowledge</p> <p>25 to that effect?</p>
<p style="text-align: right;">Page 86</p> <p>1 A. It was sent to me by either Orly or</p> <p>2 Arie. I don't recall whom.</p> <p>3 Q. Okay. And you're counsel to</p> <p>4 Everything Important, LLC?</p> <p>5 A. I have had -- I'm not general</p> <p>6 counsel to them, but I have had particular</p> <p>7 assignments for Everything Important.</p> <p>8 Q. Does Everything Important maintain</p> <p>9 records which identify what assets the company</p> <p>10 has?</p> <p>11 A. Not that I'm aware of. I would</p> <p>12 have no idea.</p> <p>13 Q. You would have no idea what assets</p> <p>14 Everything Important has?</p> <p>15 A. Zero. Again, I'm not general</p> <p>16 counsel.</p> <p>17 MR. DELLAPORTAS: Okay. So I'd</p> <p>18 like to next mark as Harris Exhibit 13 an</p> <p>19 e-mail from Michael Futterman (phonetic) to</p> <p>20 myself with e-mails below dated October 9,</p> <p>21 2018.</p> <p>22 (Whereupon, Harris Exhibit 13,</p> <p>23 e-mail from Michael Futterman, dated October 9,</p> <p>24 2018, was marked for identification as of this</p> <p>25 date by the reporter.)</p>	<p style="text-align: right;">Page 88</p> <p>1 A. I've been so informed?</p> <p>2 Q. By your client?</p> <p>3 A. Yes.</p> <p>4 Q. Have you ever seen any</p> <p>5 documentation which reflects that the art owned</p> <p>6 by this gallery is, in fact, owned by</p> <p>7 Everything Important, LLC?</p> <p>8 A. Have I ever seen any document that</p> <p>9 would evidence --</p> <p>10 Q. A bill of lading? A sale</p> <p>11 agreement? A consignment agreement? Any --</p> <p>12 A. Why would there be a bill of</p> <p>13 lading?</p> <p>14 Q. I don't know. You tell me. You</p> <p>15 didn't produce anything, so you tell me what --</p> <p>16 A. I don't have anything. But a bill</p> <p>17 of lading comes in -- if it's produced in the</p> <p>18 United States, you don't necessarily -- and if</p> <p>19 it wasn't necessarily shipped between Orly and</p> <p>20 Everything Important, you wouldn't have a bill</p> <p>21 of lading.</p> <p>22 Q. Have you ever seen any piece of</p> <p>23 paper or any electronic document anywhere in</p> <p>24 any context reflecting that the art owned by</p> <p>25 the Eric Firestone Gallery is, as you</p>

<p style="text-align: right;">Page 89</p> <p>1 represented to Michael Futterman, to frustrate 2 our restraining notice, owned by Everything 3 Important, LLC? 4 A. I believe I have seen documentation 5 which would indicate that the works of art are 6 owned by Everything Important. 7 Q. Why did you not produce that 8 documentation? 9 A. I don't have any documentation. 10 You said have I ever seen. I have seen. 11 Q. Okay. So what -- describe in as 12 exact detail as possible, what this document is 13 that you've seen, but no longer possess, which 14 informs you that the artwork in the possession 15 of the Eric Firestone Gallery is, in fact, 16 owned by Everything Important, LLC? 17 A. I don't recall, and it very well 18 may be protected by attorney-client privilege. 19 But I make that representation based on, you 20 know, inquiry that that art is, in fact, owned 21 by Everything Important. 22 Q. Inquiry from whom? 23 A. Say that again. 24 Q. Inquiry from whom? 25 A. I've spoken to my client.</p>	<p style="text-align: right;">Page 91</p> <p>1 A. I am. I said I didn't recall, but 2 I guess I am then. 3 Q. In fact, we had asked for all 4 records concerning the trust in our first 5 subpoena. Did you go back and search for 6 records for that trust to see if you had any? 7 A. Yeah, I don't have -- all those 8 records are maintained by Bill Fisher, as far 9 as I understand. 10 Q. So you have no documents relating 11 to your role as trustee of the 2007 family 12 trust? 13 A. I don't know what documents I would 14 have. The role of trustee would be in the 15 trust agreement, which Mr. Fisher has. So I 16 don't have any independent documents. 17 Q. What about documents regarding the 18 trust's investments and whatnot? 19 A. I would think the accountant would 20 hold those. 21 Q. You don't have any of those? 22 A. I have not -- nothing is sent to 23 me. No, I am not the primary on any account 24 statements. I'm sure whatever Mr. Fisher 25 provided to you will show that. I do not get</p>
<p style="text-align: right;">Page 90</p> <p>1 Q. Which client? 2 A. I've spoken to Arie. I've spoken 3 to Everything Important. 4 Q. Everything Important is a company. 5 Is there -- 6 A. Companies can make statements. 7 Q. I get that. But they make them 8 through human beings, correct? 9 A. That is always correct. 10 Q. Anyone other than Arie you spoke to 11 about the ownership of the artwork in the 12 possession of the Eric Firestone Gallery? 13 A. I don't recall if I spoke to Orly 14 about it. I know I've spoken to Arie about it. 15 I don't know that I've spoken to Orly about it. 16 I might have. I don't recall. 17 MR. DELLAPORTAS: Okay. Let's -- 18 probably have five more minutes, but let's take 19 a break. 20 (Whereupon, a recess was taken.) 21 Q. (By Mr. Dellaportas) Just a few 22 more questions. So, Mr. Harris, with regard to 23 the Orly Genger 2007 family trust, we went back 24 and checked the tax returns that Mr. Fisher 25 prepared, and they list you as the co-trustee?</p>	<p style="text-align: right;">Page 92</p> <p>1 any information. 2 MR. DELLAPORTAS: Okay. I'd like 3 to next notice another document production from 4 Mr. Harris dated September 16, 2018, and we 5 will call it Harris 14. 6 (Whereupon, Harris Exhibit 14, 7 document production from Mr. Harris, dated 8 September 16, 2018, was marked for 9 identification as of this date by the 10 reporter.) 11 A. I just want to clarify, 12 Mr. Dellaportas says to Exhibit 13, with the 13 Futterman. While I do not know the extent of 14 the Everything Important assets, I have always 15 been informed from Orly and Arie that Orly's 16 artwork has always been owned, before this 17 litigation and the like, as far as I can ever 18 remember, has always been owned by Everything 19 Important. 20 Q. And as far as you can ever 21 remember, have you ever seen a document 22 reflecting that fact? 23 A. I believe so. I mean his -- 24 Q. Sorry. Go ahead. 25 A. Her artwork, even back when the</p>

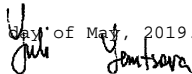
<p style="text-align: right;">Page 93</p> <p>1 family was a bit more cohesive, I think they 2 owned something called White Box, and her 3 artwork was owned by them. And her artwork has 4 always, as far back as I have familial 5 recollection, has always been owned by an 6 entity. I believe I've seen something, but 7 it's always been everyone's statement and 8 understanding, from as far as -- from the 9 beginning of time that I've been involved. 10 Q. Anything else you wish to add? 11 A. No, thank you. 12 Q. Okay. So back to Harris 14. Do 13 you recall receiving this notice of event of 14 default? 15 A. No, I did not receive this until 16 the connection with this litigation. As you'll 17 see, they don't have my law firm or the correct 18 floor on the address. And my building is a 19 large Fox News and a law firm, Ropes Gray, so 20 to find somebody in that building is a 21 monumental effort. 22 Q. Just -- all right. 23 A. But I did get a copy of it in 24 connection with this litigation. 25 Q. This was a production from your</p>	<p style="text-align: right;">Page 95</p> <p>1 this production? 2 A. This was probably -- oh, I don't 3 think it's attached. Well, actually, this is 4 an interesting document. This is evidence that 5 the \$875,000 that was received by my firm in 6 connection with the 2013 settlement was 7 exclusively used to pay for Arie Genger's legal 8 fees. 9 Q. Why is it that the only e-mail 10 you're able to find with written instructions 11 over the course of, you know, millions of 12 dollars and covering a hundred or so invoices, 13 was the one in which there was some sort of 14 dispute as to allocation before the Court? 15 A. Again -- 16 Q. Is that a coincidence? 17 A. I don't recall having gotten -- I 18 don't recall how this got there or how this 19 came about, whether this was -- I don't know 20 how this came into my possession, but I don't 21 think I got it from my e-mail. 22 Q. Someone gave it to you? 23 A. Yes, someone gave this to me, 24 'cause -- and maybe in connection with these 25 other documents. But I didn't even recall that</p>
<p style="text-align: right;">Page 94</p> <p>1 firm, correct? I mean, there are no exhibit 2 labels, but -- 3 A. It looks like my -- it looks like 4 my handwriting on the bottom. 5 Q. Okay. 6 A. So I will say I have produced this. 7 Q. Okay. And then the next document 8 within this production is the \$2 million 9 promissory note? 10 A. Which I believe I received attached 11 to this notice of event of default, which is 12 what Exhibit 14 is. 13 Q. And when you say you received these 14 documents in connection with this litigation, 15 what do you mean by that? 16 A. I believe I had made inquiry and 17 someone had sent this to me, not in the mail -- 18 not with the notice, but at some later point. 19 Q. Who is the someone? 20 A. I believe it was Eric Herschmann, 21 but I don't recall. 22 Q. What caused you to make inquiry? 23 A. I believe I had some subpoenas, and 24 I was gathering documents. 25 Q. And then what's the last page to</p>	<p style="text-align: right;">Page 96</p> <p>1 this was produced or attached. 2 Q. Okay. 3 A. But it certainly lays to rest your 4 initial inquiry into this matter, I would 5 presume. Right? 6 Q. So -- 7 MR. GENGGER: Don't address my 8 counsel. 9 MR. HARRIS: Well, then stop 10 snarking. 11 Q. So how did you record the annual 12 amounts of legal fees? Was there some sort of 13 -- you obviously showed me one chart, which 14 appeared to be prepared for purposes of 15 litigation. But how did you record 16 contemporaneously the amounts that were owed on 17 an annual basis, as reflected in those 18 promissory notes? 19 A. Amounts that were owed on an annual 20 -- I would either keep some internal 21 spreadsheets or just some working papers. 22 Q. Where are those working papers or 23 spreadsheets? 24 A. I -- at some point, Bill Fisher 25 took over and he prepared a spreadsheet, which</p>

<p style="text-align: right;">Page 97</p> <p>1 I think he sent you. And I don't have any 2 papers anymore. This was all done, and it's 3 all done now by Bill Fisher. 4 Q. Okay. So I'll represent to us that 5 Mr. Fisher said he first started collaborating 6 with you on the calculation of the fees in 7 2015. Do you agree with that? 8 A. Sounds about right. 9 Q. So he said from 2007 to 2014, the 10 task was exclusively yours, and then you worked 11 together on it from 2015 onwards? 12 A. That sounds about right. 13 Q. Okay. So the records from how you 14 came about these calculations from 2007 to 15 2014, where do they exist? 16 A. I had work papers that I had sent 17 to Bill Fisher that he then used to create his 18 spreadsheet, which then I signed off on, and 19 that became the official report. 20 Q. Okay. Now, we've gone -- 21 Mr. Fisher has produced some e-mails, Arie's 22 produced some e-mails between you, Mr. Fisher 23 and Arie, and we don't see any reference in any 24 of them to any promissory notes reflective of 25 these -- of Arie's payment of legal fees on</p>	<p style="text-align: right;">Page 99</p> <p>1 add up the law firm numbers? 2 A. Because we were keeping track by 3 law firm. 4 Q. You were also keeping track by 5 promissory note, correct? 6 A. By annual period. 7 Q. Wouldn't that have been nice to 8 give him to at least double-check the numbers 9 you have given him? 10 A. I don't recall what information I 11 provided to him in total, but the total amount 12 due was most important, and the firm's was most 13 important, and this is the amount owed by Orly. 14 And, you know, he was also keeping track of, as 15 indicated by his notes, what Arie was paying in 16 legal fees. So this was the best check and 17 balance of both the debt owed to Orly and the 18 expenditure that Arie was incurring on his own, 19 and make sure that there's no double billing, 20 double amounts. So I think this would be the 21 best -- I mean, as far as I was concerned, this 22 would be the best way to reflect and report all 23 of these numbers. 24 Q. Did you make Mr. Fisher aware of 25 the existence of promissory notes reflective of</p>
<p style="text-align: right;">Page 98</p> <p>1 Orly's behalf. Do you have an understanding as 2 to why that may be? 3 A. I have -- it has always been a 4 loan. It's always been reflected as a loan. I 5 have no idea why the term "promissory note" has 6 not appeared in whatever documents you've 7 received. Has the word "loan" appeared? I'd 8 be shocked if the word "loan" hasn't appeared. 9 MR. DELLAPORTAS: Let's mark as 10 Harris 15 a chart labeled Arie Genger schedule 11 of amounts due. 12 (Whereupon, Harris Exhibit 15, 13 chart labeled Arie Genger schedule of amounts 14 due, was marked for identification as of this 15 date by the reporter.) 16 Q. Now, Mr. Harris, do you recognize 17 this chart? 18 A. Yes. 19 Q. And Mr. Fisher indicated that the 20 2007 to '14 numbers came from your firm? 21 A. Yes. That was the papers I 22 referred to earlier that were provided to 23 Mr. Fisher to create the '07 to '14 column. 24 Q. Why didn't you just give them the 25 promissory notes for those years, rather than</p>	<p style="text-align: right;">Page 100</p> <p>1 these amounts? 2 A. Yes. He always knew this was a 3 loan and debt. And as I indicated earlier, on 4 an annual basis, I would speak to him about the 5 midterm AFR. 6 Q. Thank you, but that's not what I 7 asked. 8 Did you make him, Mr. Fisher aware 9 that there were promissory notes in existence 10 at that time reflecting the debts for 2007 to 11 2014? 12 A. Yes. 13 Q. You did make him aware of that? 14 A. Absolutely. He knew there were 15 promissory notes. He absolutely knew there 16 were promissory notes. 17 MR. DELLAPORTAS: We will take a 18 break, but we are not done. 19 (Whereupon, a recess was taken.) 20 MR. DELLAPORTAS: So we have no 21 further questions. We obviously have a lot of 22 open document issues. The one thing we would 23 reemphasize, although they're all important, is 24 that in particular with regard to the ten 25 promissory notes reflected in the \$5.3 million</p>

Page 101

1 note, if you have any contemporaneous records
 2 reflecting that those promissory notes ever
 3 existed, we would ask that you produce them
 4 right away, because it's our intention to go
 5 seek a court order scanning your hard drives,
 6 if necessary, to see if they exist. So please
 7 take that under advisement. Thank you.
 8 (Time Noted: 12:50 P.M.)
 9
 10 LANCE G. HARRIS
 11
 12 Subscribed and sworn to before me
 13 this day of , 2019.
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

Page 102

1
 2 C E R T I F I C A T E
 3 STATE OF NEW YORK)
 4
 5 COUNTY OF KINGS)
 6
 7 I, YULIYA YEMTSOVA, a Notary Public
 8 within and for the State of New York, do
 9 hereby certify:
 10 That LANCE G. HARRIS, the witness
 11 whose deposition is hereinbefore set
 12 forth, was sworn and that such
 13 deposition is a true record of the
 14 testimony given by such witness.
 15 I further certify that I am not
 16 related to any of the parties to this
 17 action by blood or marriage and that I
 18 am in no way interested in the outcome
 19 of this matter.
 20 IN WITNESS WHEREOF, I have hereunto
 21 set my hand this 14th day of May, 2019.
 22 
 23
 24 YULIYA YEMTSOVA
 25

Page 103

1 DEPOSITION ERRATA SHEET
 2
 3 Esquire Deposition Assignment No. J4114147
 4 Case Caption: Sagi Genger v. Orly Genger
 5
 6 DECLARATION UNDER PENALTY OF PERJURY
 7 I declare under penalty of perjury that
 8 I have read the entire transcript of my
 9 deposition taken in the captioned matter or
 10 the same has been read to me, and the same is
 11 true and accurate, save and except for changes
 12 and/or corrections, if any, as indicated by me
 13 on the DEPOSITION ERRATA SHEET hereof, with
 14 the understanding that I offer these changes
 15 as if still under oath.
 16 Signed on the day of
 17 , 20
 18
 19 LANCE G. HARRIS
 20
 21
 22
 23
 24
 25

Page 104

1 DEPOSITION ERRATA SHEET
 2
 3 Page No. Line No. Change to:
 4
 5 Reason for change:
 6 Page No. Line No. Change to:
 7
 8 Reason for change:
 9 Page No. Line No. Change to:
 10
 11 Reason for change:
 12 Page No. Line No. Change to:
 13
 14 Reason for change:
 15 Page No. Line No. Change to:
 16
 17 Reason for change:
 18 Page No. Line No. Change to:
 19
 20 Reason for change:
 21 Page No. Line No. Change to:
 22
 23 Reason for change:
 24 SIGNATURE: DATE:
 25 LANCE G. HARRIS

Page 105		Page 107	
1	DEPOSITION ERRATA SHEET	1	May 14, 2019
2	Page No. _____ Line No. _____ Change to: _____	2	
3		3	
4	Reason for change: _____	4	I N D E X
5	Page No. _____ Line No. _____ Change to: _____	5	EXAM BY PAGE
6		6	MR. DELLAPORTAS 5
7		7	
8	Reason for change: _____	8	E X H I B I T S
9	Page No. _____ Line No. _____ Change to: _____	9	FOR IDENTIFICATION PAGE
10		10	Harris Exhibit 1-2, Subpoenas 5
11	Reason for change: _____	11	Harris Exhibit 3, dates of drafts of Amended and Consolidated Secured Promissory Note 6
12	Page No. _____ Line No. _____ Change to: _____	12	
13		13	Harris Exhibit 4, Genger litigation trust agreement 46
14	Reason for change: _____	14	Harris Exhibit 5, February 8, 2019, production 64
15	Page No. _____ Line No. _____ Change to: _____	15	
16		16	Harris Exhibit 6, Genger payments IOLA 4/24/19 70
17	Reason for change: _____	17	Harris Exhibit 7, Checks, first one dated January 24, 2014 78
18	Page No. _____ Line No. _____ Change to: _____	18	
19		19	Harris Exhibit 8, Checks, first one dated 7/3/13 78
20	Reason for change: _____	20	Harris Exhibit 9, Northern Trust bank statement 80
21	Page No. _____ Line No. _____ Change to: _____	21	
22		22	Harris Exhibit 10, Morgan Stanley bank statement 82
23	Reason for change: _____	23	Harris Exhibit 11, Vanguard statement 83
24	SIGNATURE: _____ DATE: _____	24	
25	LANCE G. HARRIS	25	Harris Exhibit 12, Document from Stein & Harris, dated September 28, 2018 84
Page 106		Page 108	
1	DEPOSITION ERRATA SHEET	1	Harris Exhibit 13, E-Mail from Michael Futterman, dated October 9, 2018 86
2	Page No. _____ Line No. _____ Change to: _____	2	
3		3	Harris Exhibit 14, Document production from Mr. Harris, dated September 16, 2018 92
4	Reason for change: _____	4	
5	Page No. _____ Line No. _____ Change to: _____	5	Harris Exhibit 15, Chart labeled Arie Genger schedule of amounts due 98
6		6	
7	Reason for change: _____	7	
8	Page No. _____ Line No. _____ Change to: _____	8	REQUESTS FOR PRODUCTION PAGE
9		9	Communication between Arie and the witness as to Orly's promissory note 21
10	Reason for change: _____	10	Actual word documents with metadata on it 26
11	Page No. _____ Line No. _____ Change to: _____	11	Anything with regard to the above referred loan 45
12		12	
13	Reason for change: _____	13	Source of the Orly payment for the wire 77
14	Page No. _____ Line No. _____ Change to: _____	14	The 2015 payments, the three wires that the witness appears to receive directly from Orly 78
15		15	All records associated with both Harris 9 and Harris 10, including any bills paid thereby 83
16	Reason for change: _____	16	
17	Page No. _____ Line No. _____ Change to: _____	17	Records associated therewith also be produced 84
18		18	
19	Reason for change: _____	19	
20	Page No. _____ Line No. _____ Change to: _____	20	Promissory notes reflected in the \$5.3 million note, any contemporaneous records reflecting that those promissory notes ever existed 100
21		21	
22	Reason for change: _____	22	
23	SIGNATURE: _____ DATE: _____	23	
24		24	
25	LANCE G. HARRIS	25	